

Dated 28 April 2014

- (1) The Mayor and Burgesses of the London Borough of Southwark
- (2) Notting Hill Housing Trust

Development Partnership Agreement

relating to sale and development of the Aylesbury Estate Southwark

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Appendices to this Agreement

1. Development Area Plan
2. Draft Building Lease
3. Draft Plot/ Sub-Plot Lease
4. Draft Council Lease
5. Draft Legal Charge
6. Draft Private Rental Deed
7. Initial Business Plan
8. Plan of First Development Site
9. Financial Model
10. Draft Shared Equity Lease
11. Draft Shared Ownership Lease
12. Draft Target Rents Tenancy Agreement
13. Draft Nominations Agreement
14. Form of appointments and warranties
15. Schedule of Environmental Reports

PARTICULARS

Date	28 April 2014
Council	The Mayor and Burgesses of the London Borough of Southwark of 160 Tooley Street London SE1 2QH
Developer	Notting Hill Housing Trust (registered number IP16558R) whose registered office is at Bruce Kenrick House 2 Killick Street London N1 9FL
Completion Date	the date ten Working Days after the later of a) the Date of Wind and Watertight Certification for the first completed Building at the Relevant Plot; b) the Date of Topping Out for all of the Buildings at the Relevant Plot
Developer's Solicitors	Winckworth Sherwood of Minerva House 5 (Ref: RDF/20537/320) or such other solicitors as the Developer may appoint and notify in writing to the Council from time to time
Council's Solicitors	Eversheds LLP of One Wood Street London EC2 (Ref: MORRISDO/STORERM.048766.010057) or such other solicitors as the Council may appoint and notify in writing to the Developer from time to time
Plans	the plans attached to this Agreement as Appendices 1 and 8 of this Agreement
Title Numbers	the Land Registry title numbers set out at paragraph 1 of Part 2 of Schedule 12

THIS AGREEMENT is made on the date set out in the Particulars

BETWEEN

- (1) the Council; and
- (2) the Developer.

BACKGROUND

- (A) The Council is the freehold owner of the Development Area.
- (B) Subject to the satisfaction (or where permitted by the terms of this Agreement, waiver) of the Conditions Precedent and Plot Conditions the Council has agreed to sell the Development Area to the Developer on the terms of this Agreement.
- (C) Subject to the satisfaction (or where permitted by the terms of this Agreement, waiver) of the Conditions Precedent and Plot Conditions the Developer has agreed to purchase of the Development Area, to carry out the Development Works and to pay the Fixed Price, the Premiums, the Additional Payments and the Overage to the Council on the terms of this Agreement.
- (D) Both parties are to seek to achieve the Objectives.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

"AAP"	the action plan for the regeneration of the Aylesbury Estate (including the Development Area) adopted by the Council on 27 January 2010
"Above Ground Demolition"	demolition to ground level (for the avoidance of doubt to be no lower than the top of any ground floor building slab of any buildings or other structures at the Relevant Plot)
"Additional Payments"	the following payments payable by the Developer to the Council pursuant to Schedule 4 of this Agreement: <ul style="list-style-type: none">(a) The Council's Management Fee;(b) The Plot 18 Infrastructure Fee;

	<ul style="list-style-type: none"> (c) The Transport Improvements Fee; and (d) The Community Contribution
"Affordable Rent Residential Units"	the Residential Units to be used for Affordable Rents for the First Development Site
"Affordable Rents"	(at the date hereof) rents to be no greater than 80% of Market Rents and otherwise as the expression "Affordable Rents" is defined from time to time by or on behalf of the Government for England and Wales from time to time
"Affordable Residential Units"	<ul style="list-style-type: none"> (a) the Target Rent Residential Units; (b) the Intermediate Residential Units; and (c) in the case of the First Development Site only the Affordable Rent Residential Units <p>in each case to be delivered in relation to the Development in accordance with the requirements of this Agreement, the Minimum Requirements and the Business Plan</p> <p>and references to "Affordable Residential Unit" are to be construed accordingly</p>
"Agreement Information"	information relating to this Agreement (including the Business Plan) recorded in any form held by or on behalf of the Council
"Anti-Bribery Laws"	any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws (including any common law, judgment, demand, order or decision of any court, regulator or tribunal) which relate to anti-bribery and/or anti-corruption, including the Bribery Act
"Anti-Corruption Policy"	the Council's anti-corruption policy notified to the Developer from time to time
"Appointment"	each of the deeds of appointment of the Professional Team to be entered into in accordance with Schedule 15

"Appointment Default"	a) the rescission or b) the termination of the Building Contract or any Appointment due to the act or default of the Developer without the express written consent of the Council
"Apprenticeships"	paid employment whilst completing a qualification, including supervision and line management from the employer organisation with support from human resources, with a minimum duration of one year, achieving an Intermediate, Advanced or Higher Level apprenticeship qualification (equivalent to NVQ level 2 to Foundation Degree/ Diploma
"Appropriation"	the appropriation of a Relevant Plot for planning purposes with the effect that the Development within the Relevant Plot is authorised by virtue of Section 237 of the Town and Country Planning Act 1990 (as amended from time to time)
"Appropriation Powers"	the Council's powers to appropriate for planning purposes pursuant to Section 237 of the Town and Country Planning Act 1990 (as amended from time to time)
"Approved Plot Implementation Plan"	the Plot Implementation Plan which is agreed by the Developer and the Council as the Approved Plot Implementation Plan pursuant to Schedule 11 or as otherwise agreed or determined pursuant to the terms of this Agreement and which in each case shall for each Plot include all of the items listed at paragraph 1.3 of Schedule 11
"Architect"	such architect or architects as the Developer the Developer's Principal Agent or the Building Contractor appoints as the Architect for the Development Works in accordance with Schedule 15
"Area Management Strategy"	the strategy for provision of estate management services for the long term management of the Development Area for the benefit of the occupiers of the Development Area as annexed to the Business Plan as amended from time to time by agreement between the parties

"Associated Company"		has the meaning given to it in section 449 Corporation Tax Act 2010 save that in the case of the Developer, an Associated Company also includes the Developer's Principal Agent
"Aylesbury Estate"		the Aylesbury Estate as described and defined in the AAP
"BREEAM Certificate"	Final	a post-construction assessment certificate issued by a company sanctioned by the Building Research Establishment
"Bribery Act"		the Bribery Act 2010
"Building"		a building whether connecting to or forming (or to connect to or form) part of any other building or structure in which all Units are accessed off a staircore exclusive to the relevant Units
"Building Contract"		the building contract or contracts for the carrying out on a Relevant Plot of the Development Works to be entered into in accordance with Schedule 15
"Building Contractor"		such building contractor as the Developer appoints as the building contractor for the Relevant Plot of the Development Works in accordance with Schedule 15
"Building Lease"		a building lease substantially in the form attached to this Agreement at Appendix 2 and with any reasonable amendments thereto proposed by the Developer or the Council that are approved by the other such approval not to be unreasonably withheld or delayed
"Business Plan"		the Business Plan for the Development from time to time, the initial Business Plan as agreed at the date of this Agreement forming part of this Agreement and being annexed at Appendix 7
"Business Plan Review Meeting"		an annual meeting of the Steering Group to be held pursuant to paragraph 2.7 of Schedule 1 in each year of the Development Period to agree any changes to the Business Plan for the forthcoming

year

"Capital Receipts"

the lease premium actually paid or payable by a person to whom a Disposal of a Private Residential Unit and/or any car parking (excluding Private Rental Units) is made

"CDM Co-ordinator"

such reputable and suitably qualified person appointed by the Developer or the Developer's Principal Agent as the CDM Co-ordinator for the Development Works for the Relevant Plot in accordance with regulation 14(1) of the CDM Regulations

"CDM Regulations"

the Construction (Design and Management) Regulations 2007

"Certificate of Making Good Defects"

the certificate to be issued in accordance with a Building Contract certifying that all defects identified during the defects liability period under the relevant Building Contract (being not less than 12 months from the relevant Date of Practical Completion) have been remedied

"Certificate of Practical Completion"

the certificate or statement to be issued in accordance with a Building Contract certifying that Practical Completion has taken place

"Change Of Control"

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Developer or any shareholder in the Developer (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above;

But excluding any sale, transfer or disposal to an Investor of less than 25% (whether singularly or in aggregate) of the shares in the Developer

"Change Procedure"	the procedure set out in paragraph 5 of Schedule 1
"Commencement"	commencement of the Development Works for the Relevant Plot by way of Material Operation and the term "Commenced" shall be construed accordingly.
"Commercial Conditions"	the Standard Commercial Property Conditions (Second Edition)
"Commercial Unit"	a unit of accommodation forming part of the completed Development Works intended for letting other than as a Residential Unit or as Council Works
"Community Contribution"	has the meaning defined in Schedule 4
"Community Economic Strategy"	and the community and economic well-being strategy included in the Business Plan, as amended from time to time by agreement between the Council and the Developer
"Conditional Period"	for any Relevant Plot, the period from the date of this Agreement until the Unconditional Date for the Relevant Plot
"Conditions Precedent"	has the meaning given to it in clause 4.2
"Confirmation"	confirmation by the Secretary of State of the relevant CPO
"Connected Person"	a "Connected Person" as defined by section 1122 of the Corporation Taxes Act 2010
"Construction Plan"	the construction phase plan to be prepared in respect of the Development Works for a Relevant Plot under regulation 23 of the CDM Regulations
"Contamination"	the presence in, on, under or over the Development Area of any Hazardous Material or Waste
"Contract Rate"	4% above the base rate from time to time of National Westminster Bank Plc or such other clearing bank nominated by the Council at any

		time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Council may reasonably determine
"Council Lease"		the lease to be granted to the Council over any Council Works substantially in accordance with Schedule 12 and with any reasonable amendments thereto proposed by the Developer or the Council that are approved by the other such approval not to be unreasonably withheld or delayed
"Council Public Realm"		all those parts of the Development Area (or any Relevant Plot as the context requires) intended to be adopted by the local authority and agreed to be retained in the ownership of the Council in accordance with the Phasing Schedule and Business Plan
"Council Works"		all those parts of the Development Works set out in the Business Plan intended to be occupied by or at the direction of the Council including without limitation the Plot 18 Facilities and the First Development Site Community Facility
"Council's Agent"		such surveyor of no less than 10 years experience including experience of major residential-led urban regeneration projects who is a member of the Royal Institution of Chartered Surveyors as the Council may appoint and notify in writing to the Developer from time to time
"Council's Management Fee"		the sum payable to the Council by the Developer pursuant to paragraph 3.1.1 of Schedule 4
"Council's Representative"		Has the same meaning as defined in paragraph 1.2 of Schedule 1
"CPO"		any compulsory purchase order to be made by the Council to acquire the Outstanding Interests and/or Third Party Interests in the Development Area
"CPO Satisfaction Date"		either:

- (a) if Confirmation is issued the date which is 6 weeks (or such other period as is provided for in law from time to time to seek leave to bring Judicial Proceedings) and 10 Working Days from (but excluding) the date of publication of the notice of the Confirmation provided that no Judicial Proceedings have been instituted by that date; or
- (b) if Confirmation is issued and Judicial Proceedings are commenced within 6 weeks (or such other period as is provided for in law from time to time to seek leave to bring Judicial Proceedings) and 10 Working Days from (but excluding) the date of publication of the notice of the Confirmation the date on which the relevant CPO is finally upheld following the exhaustion of Judicial Proceedings which shall occur on the dismissal or withdrawal of such Judicial Proceedings or when the time for appealing against the decision of any Court has expired and no such appeal has been lodged

"Creation Trust"

New Aylesbury Trust Limited (company number 6176587) whose registered address is c/o Creation Trust Unit 8 The Blue Hut Thurlow Street London SE17 2UZ being successor body to the Aylesbury New Deal for the Communities, established to act as an advocate for tenants and residents of the Aylesbury Estate, or such other equivalent body as may be notified by the Council to the Developer from time to time

"Date of Actual Completion"

(as the context requires) the date of completion of the grant of the relevant Building Lease, Plot Lease, Sub-Plot Lease, Interim Use Lease, Council Lease, Surrender Deed, Legal Charge and/or NASS Lease of a Relevant Plot or part thereof

"Date of Actual

For any lease the actual date of completion of

Completion"	such lease
"Date of Practical Completion"	the date certified in the relevant Certificate of Practical Completion as the date of Practical Completion
"Date of Topping Out"	the date that the Developer's Agent certifies the highest point of construction (as specified in the relevant planning drawings for the Planning Permission for the Development Works) has been achieved for each Building comprised within the Development Works at a Relevant Plot
"Date of Wind and Watertight Certification"	the date the Developer's Agent certifies the relevant Development Works have reached the stage comprising the completion of the base building works to shell and core, including as a minimum the relevant Development Works being wind weather and water tight in accordance with the Specification for the Relevant Plot (and Relevant Plot for this purpose means Sub-Plots where there are Sub-Plots);
"Delivery Teams"	the Delivery Teams as defined in Schedule 1
"Demolition Condition"	the Above Ground Demolition at a Relevant Plot in accordance with the requirements of the Implementation Strategy and more particularly defined at paragraph 3 of Schedule 10
"Design Standards"	the design standards for the Development set out in the Business Plan, and taking into account the requirements of the AAP and the London Plan (with particular reference to design and size of rooms)
"Design and Technical Strategy"	the design and technical strategy as annexed to the Business Plan, as may be amended from time to time in accordance with the Change Procedure
"Developer Funding"	such funding (being either debt or equity or a combination of debt and equity or a forward sale or forward funding whether or not in combination with debt or equity) as the Developer or Developer's Principal Agent requires properly to comply with its obligations pursuant to this

Agreement in connection with the development of the Relevant Plot (to include the requirement to deliver all associated Infrastructure Works and any payments due pursuant to Community Infrastructure Levy and/or any Planning Agreements) such funding to be made available to the Developer or Developer's Principal Agent on the terms of the Developer Funding Agreement

"Developer Funding Agreement" such funding agreement or agreements relating to the Developer Funding on such terms and in such form or forms as shall be acceptable to the Developer or Developer's Principal Agent (acting reasonably)

"Developer Partner" BDW Trading Limited or such other person selected to assist fulfilment of the objectives in relation to the Private Residential Units by the Developer from time to time and approved by the Council in accordance with clause 17.6 and/or (as the context requires) any Associated Company

"Developer's Priority Return" means:

- (a) in relation to the Affordable Residential Units 0%;
- (b) in relation to the Private Residential Units 21% of the Development Receipts arising solely from the first Disposals of the Private Residential Units; and
- (c) in relation to the Commercial Units 21% of all Development Receipts arising solely from the first Disposals of the Commercial Units or such other percentage as agreed by the Steering Group in accordance with paragraph 8.6 of Schedule 4;

in each case for the purposes of this calculation Development Receipts is to exclude any Public Sector Funding received and any fees receivable by the

Developer pursuant to paragraphs 5.1.4 and 7.1.5 of Part 2 of Schedule 5.

"Developer's Agent"	the person appointed and notified to the Council from time to time by the Developer or the Developer's Principal Agent as the Employer's Agent or the Architect for the Relevant Plot of the Development Works with authority to issue the relevant Certificate of Practical Completion
"Developer's Principal Agent"	a wholly owned subsidiary of the Developer or such person who from time to time can procure the Development Works in a tax efficient manner
"Developer's Representative"	has the same meaning as defined in paragraph 2.2 of Schedule 1
"Development"	the redevelopment of the Development Area to be delivered in accordance with this Agreement (including the Business Plan and the Minimum Requirements)
"Development Account"	the notional account to be maintained by the Developer, or the Developer's Principal Agent for the Development Costs in accordance with Part 1 of Schedule 5
"Development Area"	the freehold property comprised in the Title Numbers shown for identification only edged red on the plan annexed at Appendix 1 as varied from time to time in accordance with the provisions of this Agreement
"Development Conditions"	has the meaning given to it in clause 5.2
"Development Costs"	the costs of the Development Works and other matters detailed in Part 2 of Schedule 5
"Development Longstop Date"	the date thirty years after the date of this Agreement
"Development Period"	a period of twenty years from the date of this Agreement, extendable in accordance with paragraph 4.8.7 of Schedule 6 provided that

the Development Period may not be extended beyond the Development Longstop Date.

"Development Plans"

the detailed plans, drawings, sections, elevations, specifications, priced bills of quantities, engineer's drawings and calculations and other design and building details for the Development Works for the Relevant Plot to be produced in accordance with paragraph 1 of Schedule 11

"Development Receipts"

has the meaning given in Part 3 of Schedule 5

"Development Viability Condition"

the condition defined by paragraph 1 of Part 1 of Schedule 6

"Development Works"

the development works for each Plot and/or Sub-Plot (as the context requires) more particularly described in the approved Plot Implementation Plan for the Relevant Plot including:

- (a) all necessary demolition of the existing buildings and structures on and clearance of the Relevant Plot;
- (b) any Remediation Works required for the use and development of the Relevant Plot;
- (c) any regrading works required for the development of the Relevant Plot;
- (d) construction on the Relevant Plot of all that part of the Development to be constructed on the Relevant Plot;
- (e) the Plot Related Infrastructure Works for the Relevant Plot; and
- (f) any works required pursuant to any Planning Agreement (which in respect of the First Development Site comprise the First Development Site Development Works)

AND including for the avoidance of doubt any Development Works required to be undertaken on

any other Plot in order to facilitate the development and use of the Relevant Plot

"Disposal"

means:

- (a) the grant of a lease at a premium; or
- (b) a freehold transfer;

whether by the Developer or any person deriving title under the Developer and granting a derivative interest no matter how remote and in each case to be made on arm's length bona fide commercial terms and "Disposed Of" is to construed to have a corresponding meaning

"District Heating System"

the district heating system currently installed at the Development Area for the benefit of the Aylesbury Estate

"Employer's Agent"

such person as the Developer or the Developer's Principal Agent appoints as the Employer's Agent for the purposes of the Building Contract in accordance with Schedule 15 for the Relevant Plot of the Development Works

"Employment and Skills Plan"

the employment and skills plan to be prepared by the Developer for each Plot in accordance with the requirements of the Community and Well-Being Strategy

"Environment"

all or any of the following media namely the air, including without limitation the air within buildings and within other natural or man-made structures, water and land and any living organisms or eco-systems supported by those media

"Environmental Consultant"

such environmental consultant as the Developer or the Developer's Principal Agent or the Building Contractor appoints as the environmental consultant for the Relevant Plot of the Development Works in accordance with Schedule 15

"Event of Default"

the occurrence of one or more of the following

events:

- (a) the Insolvency of the Developer;
- (b) (subject to clause 22.11) a Milestone is not achieved by the corresponding Longstop Date or the Developer fails to achieve a Minimum Requirement;
- (c) if the Developer commits a material breach of this Agreement (here excluding the Business Plan) which causes an emergency to arise and the Developer does not take action immediately to remedy the breach upon becoming aware of such emergency;
- (d) if the Developer commits a material breach of this Agreement (here excluding such breach of the Business Plan other than its obligations in any of the sections of the Business Plan headed either "specification" or "key principles") and the Council issues a default notice referring to this subparagraph (e) ("Default Notice") and either:
 - (i) the Developer proposes in writing to the Council within fifteen (15) Working Days after the date the Developer receives the Default Notice a programme to rectify the breach (setting out the steps to be taken in rectifying the breach and the timetable within which they will be undertaken) and the Council (acting reasonably) approves that programme and the Developer subsequently fails to implement such programme properly in accordance with its terms or fails to rectify the material breach in accordance with such programme; or
 - (ii) the parties are unable to agree a suitable programme of rectification within

	<p>60 Working Days of the Default Notice; or</p> <p>(iii) the Developer fails to make a proposal in writing as provided by paragraph (d) (i) of this defined term; or</p> <p>(e) there is an Unacceptable Change of Control prior to the Date of Practical Completion of the last Plot of the Development Works; or</p> <p>(f) the Developer fails to attend a re-arranged Steering Group meeting properly called pursuant to paragraph 2.14 of Schedule 1</p> <p>(g) the Council fails to attend a re-arranged Steering Group meeting properly called pursuant to paragraph 2.14 of Schedule 1</p>
"Financial Appraisal"	an appraisal to be carried out by the Developer using the Financial Model and otherwise to be carried out in accordance with the requirements of this Agreement
"Financial Model"	<p>the financial model used to determine:</p> <p>(a) whether the Development and/or a Plot is Viable, and</p> <p>(b) the Premium payable for each Plot</p> <p>in the form as appended to this Development Agreement as Appendix 9, or such other model as approved by the Steering Group at its discretion</p>
"First Development Site"	the first Plots of the Development to be undertaken (being Plots 1, 2 and 3 as identified in the Plot Plan)
"First Development Community Facility"	<p>Site the community facility comprising no less than 250 square metres of Internal Area of fully fitted out office / community space to be delivered by</p>

the Developer for the Council at the First Development Site in accordance with the Business Plan and the Plot Implementation Plan for the First Development Site

"First Development Site Development Works" Site all those parts of the Development Works to be undertaken at the First Development Site or (where necessary to facilitate the developed use of First Development Site) on another Plot or Plots including those Development Works described in the First Development Site Specification

"First Development Site Planning Condition" means:

- (a) the grant of a Satisfactory Hybrid Planning Permission satisfying the requirements of paragraph 2.4 of Part 2 of Schedule 8; and
- (b) the exchange in accordance with paragraph 4 of Part 2 and paragraph 3 of Part 3 of Schedule 8 of any Planning Agreement free from Onerous Conditions, which is necessary to implement the Satisfactory Hybrid Planning Permission

"First Development Site Specification" the Specification for the First Development Site to be annexed to the Plot Implementation Plan for the First Development Site

"Fixed Payments" has the meaning defined in Schedule 4

"Force Majeure" any one or more of the following:

- (a) fire
- (b) storm or other exceptionally adverse weather conditions;
- (c) war, hostilities, rebellion, insurrection, military or usurped power or civil war;
- (d) labour lockouts, strikes or other industrial disputes;

- (e) riot, terrorist action, commotion, disorder;
- (f) decree of government;
- (g) non-availability or shortage of labour, materials or equipment; or
- (h) any other causes or circumstances beyond the reasonable control of the Developer, the Developer's Principal Agent, the Building Contractor or Principal Sub-Contractors

"Funding Condition"

has the meaning as defined in Schedule 7

"Good Industry Practice"

using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances

"Habitable Rooms"

all rooms with at least one window which are rooms a) capable of use for sleeping or living or dining (but excluding kitchens save where b) applies); or b) a kitchen with an overall floor area of not less than 11m² Internal Area but excluding in all cases toilets, bathrooms, landings, halls and lobbies Provided That any room in excess of 27.5m² Internal Area will be treated as two Habitable Rooms in the determination of the quantum of Residential Units

"Hazardous Material"

any substance, whether in solid, liquid or gaseous form, which is capable of causing harm to human health or to the Environment whether on its own or in combination with any other substance

"Health and Safety Executive"

the Health and Safety Executive or any successor department or organisation having responsibility for the administration of the CDM Regulations

"Highways Act"	the Highways Act 1980
"Implementation Group"	the Implementation Group to be established in accordance with the provisions of Schedule 1, which is at any time to comprise the personnel of the Parties to be responsible for the day-to-day implementation of the Development.
"Implementation Strategy"	the implementation strategy for the Development Area comprising the Implementation Strategy: Land Assembly, Implementation Strategy: Development and Implementation Strategy: Interim Management as annexed to the Business Plan, as may be amended from time to time in accordance with the Change Procedure
"Implementation Strategy: Development"	the part of the Implementation Strategy dealing with the strategy for the Development of the Development Area, as annexed to the Business Plan, as may be amended from time to time in accordance with the Change Procedure
"Implementation Strategy: Interim Management"	the part of the Implementation Strategy dealing with the strategy for the interim management of the Development Area, as annexed as to the Business Plan, as may be amended from time to time in accordance with the Change Procedure
"Implementation Strategy: Land Assembly"	the part of the Implementation Strategy dealing with land assembly of the Development Area, as annexed to the Business Plan, as may be amended from time to time in accordance with the Change Procedure
"Index"	the "all items" CPI Index maintained by the Office of National Statistics or, where such index ceases to be published (or where the Parties otherwise agree), such replacement index as may be agreed by the Steering Group from time to time
"Information Request"	a proper request for any Agreement Information under the FOI Legislation
"Infrastructure Works"	all those parts of the Development Works required to be carried out to comply with any Statutory Consents or Planning Agreement or to

facilitate the developed use of a Plot or Plots following completion of the relevant Development Works including (so far as applicable) the construction installation upgrading and connection of:

- (a) roads and footpaths;
- (b) any bridges, tunnels and underpasses;
- (c) areas of open space and parkland;
- (d) electricity, foul and surface water drainage, gas, water, and public telephone services to the public mains;
- (e) internet, cable and other computer or telecommunications media; and
- (f) all pipes, wires, ducts and other conduits for the passage of such services

"Injunctable Claimants"

for a Relevant Plot all persons with the benefit of rights of light over the Property who have an injunctable or potentially injunctable claim in respect of the Development at the Relevant Plot as advised by the Rights of Light Surveyor in the relevant Rights of Light Report

"Insolvency"

has the meaning given to it in Schedule 18

"Insured Risks"

the risks of:

- (a) fire, subterranean fire, lightning, storm, tempest, flood and explosion;
- (b) bursting or overflowing of water tanks, apparatus or pipes or the escape of water from any of them;
- (c) aircraft or other aerial devices or articles dropped or falling from any of them;
- (d) riot, civil commotion and malicious damage;
- (e) impact, earthquake, heave, landslip,

subsidence

Provided that such risks are insurable in the London marketplace on reasonable commercial terms

"Interim Uses"

such temporary uses for a part of the Development Area as may be agreed by the Council (acting reasonably) pursuant to the Partnership Working Strategy

"Interim Use Lease"

the lease to be granted by the Council for any parts of the Development Area agreed to be used for Interim Uses in a form proposed by either the Developer or the Council and approved by the other (such approval not to be unreasonably withheld or delayed)

"Intermediate Residential Units"

Residential Units offered for Shared Equity, Shared Ownership or other low cost home ownership products as may be approved by the Council at its absolute discretion

"Internal Area"

means:

- (a) in respect of the Commercial Units, the First Development Site Community Facility and any other Council's Works which comprise non-residential units of accommodation the "gross internal area" of each Building to be constructed on the Development Area pursuant to the Development Works; or
- (b) in respect of the Residential Units and any Council's Works that comprise residential units of accommodation the "net sales area" of each Building to be constructed on the Development Area pursuant to the Development Works

and in each case measured in accordance with the current Code of Measuring Practice from time to time as published by the Royal Institution of Chartered Surveyors

"Investor"	any person approved in writing by the Council, such approval not to be unreasonably withheld or delayed, who has entered into an agreement with the Developer:
	<ul style="list-style-type: none"> (a) to purchase the Development Area or a Plot or Sub-Plot from the Developer; or (b) to provide funding to the Developer or Developer's Principal Agent for the carrying out of the Development Works for a Relevant Plot, whether or not in addition to purchasing the Development Area or a Plot or Sub-Plot and which may include (if the Developer requires) the Developer's Principal Agent and the Developer's Partner
"Judicial Proceedings"	<p>an application for either:</p> <ul style="list-style-type: none"> (a) judicial review under Part 54 of the Civil Procedure Rules 1998 and any complementary rules practice directions, protocols and any amendments to the foregoing issued by the Lord Chancellor's Department; or (b) proceedings under section 23 of the Acquisition of Land Act 1981; or (c) proceedings under section 287 of the Planning Act; or (d) an appeal under section 317 of the Highways Act; or (e) breach of human rights under the Human Rights Act 1998
"KPIs"	the Key Performance Indicators set out at Section 14 of the Business Plan, (as may be varied from time to time) to be in accordance with the requirements of the Business Plan
"KPIs Incentive Fund"	the incentive fund to be established under the

terms of this Agreement

"Liability Period"

Means:

(a) in the case of any Council Works or Council Public Realm the period of 12 years from the date of the issue of the relevant Certificate of Practical Completion for the relevant Development Works (acknowledging that certificates may be issued for different elements of the Development Works) and

(b) in the case of all other Development Works one year from the date of the issue of the relevant Certificate of making good defects for the relevant Development Works (acknowledging that certificates may be issued for different elements of the works)

"the London Living Wage" the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure

"The London Plan" the overall strategic plan for London published by the Greater London Authority or any statutory successor and available on their website

"Longstop Dates" the Longstop Dates for the satisfaction of the Milestones as set out in Schedule 2, subject to extension in accordance with clause 22.11

"Main Contractor" a contractor appointed pursuant to a design and build contract which may be in a JCT form with amendments

"Major Packages" a series of Building Contracts for parts of the Development Works

"Market Rents" rent charged in the open market on arms length transactions between a willing landlord and a willing tenant

"Masterplan" the Aylesbury Estate Masterplan, a copy of which is attached to the Business Plan as may be

	amended by agreement between the Parties from time to time
"Material Operation"	has the meaning given to it by section 56 of the Planning Act
"MCI Manager"	such suitably senior employee or consultant as the Developer may notify to the Council from time to time whose principal role is the co-ordination and arrangement of delivery of the MCI Strategy
"MCI Strategy"	The MCI Strategy as annexed to the Business Plan from time to time
"Mechanical and Electrical Services Engineer"	such mechanical and electrical services engineer as the Developer or the Developer's Principal Agent or the Building Contractor appoints as the Mechanical and Electrical Services Engineer for the Relevant Plot of the Development Works in accordance with Schedule 15
"Milestone Dates"	the dates for the satisfaction of the Milestones as set out at Schedule 2 of this Agreement
"Milestones"	the objectives to be achieved by the Milestone Dates or Longstop Dates as set out in the Schedule 2 of this Agreement
"Minimum Requirements"	the requirements for the Development that must be achieved as a minimum as part of the Development being those requirements set out at Schedule 3
"Mobilisation Programme"	the mobilisation programme for the Development set out in the Business Plan
"NASS Lease"	the form of lease to be granted to the NASS Manager in accordance with clause 18.1
"NASS Manager"	such organisation to be established in accordance with the heads of terms set out at paragraph 10.5.3.1 of the Business Plan (or otherwise agreed by the Parties)
"New School Aylesbury"	The new school to be constructed at the

Aylesbury Estate in accordance with the AAP

"NHA"	A wholly-owned subsidiary Associated Company to the Developer as shall be established by the Developer and notified to the Council
"Nominations Agreement"	The Nominations Agreement in substantially the forms annexed at Appendix 13 to be entered into by the Developer and the Council and with such reasonable amendments as may be proposed by either the Developer or the Council and approved by the other (such approval not to be unreasonably withheld or delayed)
"Nominee"	a person (not being an Unacceptable Nominee) unless otherwise approved by the Council at its discretion) nominated by the Investor in respect of the Investor's rights and obligations in the Step in Agreement in each case to be approved by the Council (such approval not to be unreasonably withheld or delayed)
"Non-Adopted Shared Space"	those external parts of any Plot that are intended to be communal and not adopted by the highways authority such areas more specifically identified and defined (in accordance with the Design and Technical Strategy and Area Management Strategy) in the relevant Plot Implementation Plan
"Objective"	the Objective as defined in clause 2.1 of this Agreement
"Off-Site Units"	Affordable Residential Units from the Developer's own supply (or a third party's supply) not including any Units at the Development, to be offered to Tenants or leaseholders currently at the Development Area by the Developer pursuant to the Re-Housing Specification
"Onerous Conditions"	has the meaning given to it in paragraph 1 of Part 1 of Schedule 8
"Option to Tax"	an option to tax the Development Area pursuant to Part 1 Schedule 10 to the VATA and "Opted to

	Tax" has a corresponding meaning
"Outstanding Interests"	<p>the leasehold interests in the existing leasehold accommodation at the Development Area which:</p> <ul style="list-style-type: none"> (a) are not either within the ownership of the Council or the Developer and free from encumbrances; and (b) are specified as being required pursuant to the Implementation Strategy <p>and for the avoidance of doubt such Outstanding Interests do not include any Third Party Interests</p>
"Overage"	the Overage (if any) payable to the Council by the Developer in accordance with Schedule 4 being the Sales Overage and/or the Development Overage and/or the Additional Overage (as the context requires, and as respectively defined in Schedule 4)
"Partnership Working Strategy"	the partnership working strategy as set out in the Business Plan
"Phase 2"	Plot 4, Plot 5 Plot 6 and Plot 7 and Plot 18 as respectively defined in the Plot Plan or such other Plots as agreed by the Steering Group from time to time
"Phase 3"	Plot 8 and 9 as respectively defined in the Plot Plan or such other Plots as agreed by the Steering Group from time to time
"Phase 4"	Plot 10 to 17 as respectively defined in the Plot Plan or such other Plots as agreed by the Steering Group from time to time
"Phasing Schedule"	<p>the programme for:</p> <ul style="list-style-type: none"> (a) delivery to the Council of the Plot Implementation Plans; (b) satisfaction of the Conditions Precedent and Plot Conditions for each Plot; (c) satisfaction of the Development Conditions

for each Plot;

- (d) the Commencement and Practical Completion of the Development Works for each Plot (and separately the Remediation Works and Infrastructure Works for each Plot) such Phasing Schedule setting out (amongst other matters) target dates for:
 - (i) submitting a Plot Implementation Plan in relation to each Plot;
 - (ii) (save for the First Development Site) submitting a Plot Planning Application for each Plot;
 - (iii) satisfaction of the Plot Conditions in respect of each Plot;
 - (iv) the Commencement of the Development Works for each Plot;
 - (v) Practical Completion of each Plot

in the form attached to Implementation Strategy with such amendments as the Council and the Developer may agree in accordance with clause 6

“Planning Act”

the Town and Country Planning Act 1990

“Planning Agreement”

an agreement or undertaking in respect of and affecting the Development Area or the Development Works, whether or not also affecting other property, pursuant to:

- (a) section 106 of the Planning Act;
- (b) section 136 of the Local Government Planning and Land Act 1980;
- (c) section 111 Local Government Act 1972;

- (d) sections 38 or 278 Highways Act;
- (e) section 104 Water Industry Act 1991 or any other provision of similar intent, within the meaning of the Water Act 1989, with an appropriate authority for the supply of water or the drainage of surface or foul water from the Development Area; or
- (f) any agreement with an appropriate authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any of them

"Planning Application" (as the context requires) a Hybrid Planning Application, or a Plot Planning Application, and includes any further applications or variations made in accordance with Schedule 8

"Planning Permission" (as the context requires) a Hybrid Planning Permission or a Plot Planning Permission

"Plot" any area of land at the Development Area which is capable of independent use and occupation following the carrying out of the Development Works as those areas are identified in the Plot Plan and described in the Phasing Schedule as may be amended by agreement between the Council and the Developer pursuant to this Agreement from time to time

"Plot 18" the part of the Development Area identified as "Plot 18" in the Plot Plan and Phasing Schedule

"Plot 18 Infrastructure Fee" has the same meaning as detailed in Schedule 4

"Plot 18 Facilities" the community facilities to be delivered for (or at the direction of) the Council at Plot 18 in accordance with the Business Plan

"Plot Conditions" has the meaning given to it in clause 4.3

"Plot Final Viability" the condition as defined in paragraph 3.1 of

Condition"	Schedule 6
"Plot Implementation Plan"	a proposal for a Plot to be prepared and submitted by the Developer in accordance with Schedule 11 to include detailed costings, plans, programmes, and specifications for the Development Works to be carried out on the Plot (including all associated Plot Related Infrastructure Works Council Public Realm and Council Works) and the Financial Appraisal for the Relevant Plot, as well as the Plot Sales and Marketing Strategy
"Plot Implementation Plan Condition"	the confirmation by the Council of an Approved Plot Implementation Plan for the Relevant Plot in accordance with Schedule 3
"Plot Lease "	a lease of a Plot of the Development Area (excluding any Council Public Realm) to be granted by the Council and accepted by the Developer in substantially the form of the agreed form of Plot Lease attached to this Agreement and with such reasonable amendments proposed by either the Developer or the Council and approved by the other such approval not to be unreasonably withheld or delayed
"Plot Plan"	the plan showing the Plots and Sub-Plots at the Development Area annexed to the Business Plan and as varied from time to time in accordance with the Change Procedure
"Plot Application"	Planning has the same meaning as defined in Schedule 8
"Plot Planning Condition"	<p>(a) the grant of a Satisfactory Plot Planning Permission satisfying the requirements of paragraph 1.4 of Part 3 of Schedule 8; and</p> <p>(b) the exchange in accordance with paragraph 3 of Part 3 of Schedule 8 of any Planning Agreement free from Onerous Conditions, which is necessary fully to implement a Satisfactory Plot Planning Permission</p>

"Plot Planning Permission"	has the meaning given at Schedule 8
"Plot Related Infrastructure Works"	all Infrastructure Works required to be carried out in on under or over a Plot or Sub-Plot or any other Plot or Sub-Plot required to comply with any Statutory Consents or Planning Agreement or to facilitate the developed use of the Relevant Plot following completion of the Development of the Relevant Plot
"Plot Sales and Marketing Strategy"	the plot specific sales and marketing strategy to be prepared by the Developer and approved by the Council as part of the Plot Implementation Plan for each Plot
"Practical Completion"	(as the context requires) completion of the whole of the Development Works on a Plot or a Sub-Plot (as the case may be) in accordance with the terms of the Building Contract or completion of the Demolition Works (as defined in Schedule 10) in accordance with the relevant Demolition Contract (as defined in Schedule 10) pursuant to Schedule 10
"Premium"	has the meaning set out in Schedule 4
"Principal Sub-Contractors"	the sub-contractors appointed or to be appointed by the Building Contractor with a material design responsibility for structural or external parts of the Development Works on the Relevant Plot
"Priority Agreement"	any agreement to be entered into on the terms of this Agreement between (1) the Council and (2) an Investor to regulate priorities between the rights of the Council under the Legal Charge and the rights of an Investor under any security given by the Developer to an Investor in respect of any funding provided by the Investor for the Development Works so such funding takes priority to any payments secured by a Legal Charge and in such reasonable form as proposed by the Developer to be approved by the Council such approval not to be unreasonably withheld or delayed

"Private Residential Units"	any Residential Units that are not Affordable Residential Units and which may include car parking spaces
"Professional Team"	<p>each of the following for the Relevant Plot:</p> <ul style="list-style-type: none"> (a) the Architect; (b) the Employer's Agent; (c) the Environmental Consultant; (d) the Mechanical and Electrical Services Engineer; (e) the CDM Co-ordinator; (f) the Quantity Surveyor; and (g) the Structural Engineer (h) and any other consultants with a material design responsibility for structural or external works
"Programme of Works"	the Programme of Works for the Relevant Plot to be produced by the Developer and approved by the Council in accordance with paragraph 2 of Schedule 11
"Prohibited Materials"	<p>any products or materials which are generally known to be deleterious at the time of specification or use, in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:</p> <ul style="list-style-type: none"> (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report; (b) relevant British or European Standards or

	Codes of Practice; or
	(c) any publications of the Building Research Establishment related to the specification of products or materials
"Project Director"	such suitably senior employee of or consultant to the Developer or Developer's Principal Agent approved by the Council (acting reasonably), being the person at the Developer or Developer's Principal Agent with overall responsibility for co-ordination and management of the Development and with detailed knowledge of its day-to-day delivery
"Public Sector Funding"	any funding received by the Developer the Developer Partner or any Associated Company to finance any part of the Development from public sector bodies including but not limited to funding by the Council, the Department for Communities and Local Government, the Homes and Communities Agency, the Greater London Authority and funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Act 1993 and 1998
"Quantity Surveyor"	such quantity surveyor as the Developer or Developer's Principal Agent or the Building Contractor appoints as the Quantity Surveyor for the Relevant Plot of the Development Works in accordance with Schedule 15
"Red Book"	The RICS Valuation - Professional Standards (eighth edition) in the most recent replacement published by RICS Valuation Professional Group from time to time
"Registered Provider"	is the provider of social housing as defined in section 80 of the Housing and Regeneration Act 2008

"Registered Provider Contribution"	has the meaning set out at Schedule 5
"Re-housing Specification"	the specification for the re-housing requirement for the Development Area, as annexed to the Business Plan
"Reinstatement Cost"	<p>the costs, allowing for inflation during the period of reinstatement, of:</p> <ul style="list-style-type: none"> (a) debris removal, demolition, site clearance and complete reinstatement of the Development Works for the Relevant Plot, assuming their total destruction; and (b) all the Professional Team's design, legal and other professional fees
"Relevant Plot"	the principal Plot or Sub-Plot (as the context requires) to which the relevant obligation relates
"Relevant Plot Longstop Dates"	the Longstop Dates relating to the Relevant Plot as set out in the tables at Schedule 2
"Relevant Staff"	all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged in the performance of the Developer's obligations under this Agreement for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year
"Remediation Works"	all those parts of the Development Works required to remove Contamination as necessary to comply with any Statutory Consents or Planning Agreement or necessary to accommodate the use of the Relevant Plot following completion of the Development Works

	for that Plot
"Resident's Charter"	the resident's charter prepared in accordance with the Marketing, Communications and Involvement Strategy, as amended from time to time by agreement by the Steering Group(both acting reasonably)
"Residential Unit"	a unit of residential accommodation forming part of the completed Development but excluding any Council Works
"Rights of Light Interests"	all rights of light where the beneficiary of such rights would have an injunctable or potentially injunctable claim in respect of the Development on a Relevant Plot as identified by the Rights of Light Surveyor
"Rights of Light Report"	a report to be prepared by the Rights of Light Surveyor (a) advising the Developer which persons who have interests in properties with the benefit of rights of light over a Relevant Plot have an injunctable or a potentially injunctable claim consequent on the proposed Development and (b) providing a budget for securing releases from such persons so as to enable the Development to proceed without infringing their rights of lights, as updated from time to time taking into account any changes to the Business Plan and/or new information provided to the Rights of Light Surveyor
"Rights of Light Surveyor"	such rights of light surveyor of no less than ten years experience in residential led mixed use developments and major urban regeneration schemes appointed by the Developer and approved by the Council (acting reasonably)
"Risk Log"	the risk log for the Development included in the Business Plan as may be varied from time to time
"Sales Incentives"	any reasonable incentives deductions Extras (as defined at Schedule 4) discounts allowances reasonably provided or allowed to any prospective buyer or lessee of any Private Residential Unit having regard to current market practice and

conditions including (but not limited to) payment by the Developer, the Developer's Principal Agent or Nominee and/or any Associated Company of the following:

- (a) purchaser's legal fees surveyors costs or removal costs;
- (b) purchaser's Stamp Duty Land Tax;
- (c) discount from sale price;
- (d) contribution towards service and/or estate charge;
- (e) a deposit which would otherwise be payable by the purchaser;
- (f) a rental guarantee and/or mortgage holiday and/or other financial assistance to a purchaser;
- (g) any other reasonable incentives the Buyer may use in the marketing of the Private Residential Units; and
- (h) the Cost of Extras (as defined at Schedule 4)

"Satisfactory Hybrid Planning Permission"

has the meaning given to it in paragraph 1 of Part 1 of Schedule 8

"Satisfactory Plot Planning Permission"

has the meaning given to it in paragraph 1 of Part 1 of Schedule 8

"Section 73 Application"

an application to the local planning authority under section 73 of the Planning Act to vary a Planning Permission

"Shared Equity"

Residential Units offered to existing Aylesbury Estate leaseholders by way of a Shared Equity Lease and otherwise on terms approved by the Council (not to be unreasonably withheld or delayed) in accordance with the Implementation Strategy: (Land Assembly), to be on a shared equity basis with no rent payable on the portion

	of the equity retained by the Registered Provider
"Shared Equity Lease"	the form of lease substantially in the form of the draft annexed as Appendix 10 with such reasonable amendments as the Developer may propose and the Council approve (such approval not to be unreasonably withheld or delayed)
"Shared Ownership"	Residential Units offered to existing Aylesbury long leaseholders on a shared ownership basis in accordance with the Nominations Agreement by way of a Shared Ownership Lease and otherwise on terms approved by the Council (such approval not to be unreasonably withheld or delayed) in accordance with the Implementation Strategy: Land Assembly
"Shared Ownership Lease"	the form of lease substantially in the form of the draft annexed at Appendix 11 with such reasonable amendments as the Developer may propose and the Council approve (such approval not to be unreasonably withheld or delayed)
"Specialist"	has the meaning given to it in clause 14
"Specification"	the detailed specification of the Development Works for the Relevant Plot to be prepared in accordance with paragraph 1.3 of Schedule 11
"Start Date"	twelve calendar months after the Unconditional Date for the Relevant Plot
"State Aid"	any aid granted by a member state of the European Union or through state resources of such a member state in any form whatsoever which distorts or threatens to distort competition and which affects, actually or potentially, trade between European Union member states
"Statutory Consents"	any statutory approvals, consents, licences or permissions required from any local or other competent authority to enable the lawful undertaking and completion of the Development Works for the Relevant Plot or to reinstate them following their damage or destruction

"Statutory Requirements"	<p>all or any of the following:</p> <ul style="list-style-type: none"> (a) any Acts of Parliament and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws and permissions for the time being made under or deriving validity from any Act of Parliament; (b) any European directive or regulations and rules having the force of law in the United Kingdom; and (c) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Development Works
"Steering Group"	the "Steering Group" as defined in Schedule 1
"Step-In Agreement"	<p>any agreement to be made between (1) the Council (2) the Developer and (3) an Investor providing for the remedying of any Event of Default by an Investor or a Nominee complying with the terms of this Agreement a skeleton form of which is substantially set out in Schedule 20 subject to any reasonable amendments thereto proposed by the Developer the Council or the Investor that are approved by the other party such approval not to be unreasonably withheld or delayed</p>
"Stopping Up Condition"	the Stopping Up Order Date occurring
"Stopping Up Land"	<p>any parts of the Development Area identified in the Relevant Plot Implementation Plan as land in respect of which a Stopping Up Order is required in order to facilitate the Development</p>
"Stopping Up Order"	<p>either:</p> <ul style="list-style-type: none"> (a) any order or series of orders to be made by the Secretary of State under Section 247 and/or Section 257 of the Planning Act; or

- (b) an order under Section 116 and/or Section 118 and/or Section 119 of the Highways Act

for the stopping up or extinguishment of that part of the Stopping Up Land as is public highway

"Stopping Up Order Date" if a Stopping Up Order is confirmed the later of:

- (a) the date which is 6 weeks following (but excluding) the date of receipt by the Council or the Developer (as the case may be) of the Stopping Up Order provided that no Judicial Proceedings have been instigated by that date; and
- (b) if Judicial Proceedings are commenced within the period specified in paragraph (a), the date those proceedings are finally disposed of leaving in place the Stopping Up Order

"Structural Engineer" such structural engineer as the Developer or the Developer's Principal Agent or the Building Contractor appoints as the Structural Engineer for the Relevant Plot of the Development Works in accordance with Schedule 15

"Sub-Plot" the Sub-Plots for each Plot as determined by the relevant Plot Implementation Plan, being consistent with the Sub-Plot Requirements

"Sub-Plot Lease" a lease of a Sub-Plot of the Development Area (excluding any Council Public Realm) to be granted by the Council and accepted by the Developer substantially in the form of the agreed form of Plot Lease from time to time

"Sub-Plot Underleases" underleases to be granted by the Developer in a form based on the form of Plot Lease such Sub-Plot underleases only to be granted to a) NHA in relation to all Private Residential Units and b) to Notting Hill Home Ownership Limited (IP number: 23066R) for any Intermediate Residential Units and (c) Notting Hill Market Rent Limited (company number 6091982) in relation to any

Private Rental Units

"Subsequent Plots"	the Plots to be delivered at the Development Area excluding the First Development Site
"Target Rent Residential Units"	Residential Units let at Target Rents pursuant to the Target Rents Tenancy Agreement
"Target Rents"	the "target rents" set by reference to the formula provided by or on behalf of the Government of England and Wales from time to time
"Target Rents Tenancy Agreement"	the lease to be granted to occupiers of Target Rent Residential Units, such lease to be substantially in the form annexed as Appendix 12, with such amendments as may be agreed by the Parties (acting reasonably)
"Tenant"	means any tenant of a Unit or Units
"Third Party Interests"	the Rights of Light Interests or any other third party interests that would be compensatable interests in a CPO and/or Appropriation of a Plot (excluding any Outstanding Interests)
"Traineeships"	a paid on-site work placement whilst completing a qualification with support from a qualified training and employment advisor, with a minimum duration of six months, providing a NVQ level 2/3 trade qualification
"Title Matters"	the agreements, covenants, declarations, easements, exceptions, provisions, reservations, stipulations and other matters referred to in the deeds and documents briefly described in Part 2 of Schedule 12 referred to in the Title Numbers
"Transport Improvement Fee"	has the meaning detailed in Schedule 4
"Unacceptable Act"	(a) being or having been convicted of any indictable offence relating to the conduct of a person's business or profession or being or having been convicted of any indictable offence relating to money-laundering,

counterfeiting, the manufacture, sale or distribution of illegal drugs or other criminal goods, smuggling or armament sales (as determined by a Court or other relevant regulator authority or legislation); or

- (b) committing or having committed an act of grave misconduct (as determined by a Court or other relevant regulator authority or legislation); or
- (c) having been convicted by a Court of failing to comply with any obligations relating to the payment of any taxes

"Unacceptable Change of Control"

in the Council's reasonable opinion a Change of Control that:

- (a) would amount to the award of a new contract for the delivery of the Development for the purposes of the EU Treaty, Directive 2004/18 EC or the 2006 Regulations; and/or
- (b) is to Unacceptable Person; and/or
- (c) is to a person where the effect would be to significantly reduce the ability of the Developer to deliver the Development in accordance with this Agreement

"Unacceptable Nominee"

a Nominee to which either or both of the following applies:

- (a) the proposed Nominee is a company incorporated in or an individual resident in a country outside the United Kingdom and there is no treaty for the mutual enforcement of judgments between the United Kingdom and that country unless, in relation to a company:
 - (i) it carries on and maintains a business in the United

Kingdom;

(ii) it has a current bank account in the United Kingdom;

(iii) it has, in the reasonable opinion of the Council, sufficient assets in the United Kingdom to enable it to meet its liabilities under this Agreement; and

(iv) it agrees to be bound by the jurisdiction of the English courts

(b) the proposed Nominee is a person who enjoys sovereign or state immunity, unless a department, body or agency of the United Kingdom Government;

"Unacceptable Person"

(a) any sovereign fund or entity owned or controlled by or any governmental body of a country in respect of which the United Kingdom has withdrawn or suspended diplomatic relations (for so long as such withdrawal or suspension lasts);

(b) any sovereign fund or entity owned or controlled by or any governmental body of a country in respect of which the United Kingdom has imposed punitive sanctions;

(c) any sovereign fund or entity owned or controlled by or any governmental body of a country in respect of which the United Nations has imposed punitive sanctions;

(d) any senior governmental or military officer or political leader of any of the countries referred to in paragraphs (b) or (c) of this definition or any companies or other investment or

trading vehicles beneficially owned by such individuals or their immediate family;

(e) any body or organisation which it would be illegal for a British citizen to be a member of or such is otherwise classed as a banned organization in the United Kingdom; and

(f) any entity engaged openly or covertly in activities directed towards the overthrowing or influencing by force or violence of Her Majesty's Government in the United Kingdom

"Unconditional Date"

(a) in respect of the First Development Site the date on which the last of the Conditions Precedent and Plot Conditions for the First Development Site are satisfied or waived in accordance with this Agreement; and

(b) in respect of all Plots (other than the First Development Site) the date on which the last of the Conditions Precedent and Plot Conditions for the Relevant Plot is satisfied or waived in accordance with this Agreement

"Unit"

a Residential Unit or a Commercial Unit (as the case may be)

"Third Party Interests Indemnity Agreement"

an agreement proposed by the Council (acting reasonably) and approved by the Developer (such approval not to be unreasonably withheld or delayed) whereby the Developer indemnifies the Council to a financial cap acceptable to the Council (acting reasonably) for proper claims for infringements of Rights to Light and/or other Third Party Interests

"Vacant Possession"

the acquisition by the Council (including entering into legally binding agreements for purchase with owners or occupiers) of the Outstanding Interests by either a) private treaty and/or b) CPO in

		accordance with the provisions of Schedule 9
"Vacant Condition"	Possession	the acquisition by the Council of the Outstanding Interests by private treaty or the CPO Satisfaction Date occurring in each case as required for the development of the Relevant Plot and b) the Rights of Light Interests being either released or appropriated or otherwise extinguished
"VAT"		Value Added Tax
"VATA"		Value Added Tax Act 1994
"Viable"		has the same meaning as defined in Schedule 6
"Viability Notice"		a notice stating whether or not in the Developer's reasonable opinion it considers that the Development Viability Condition or the Plot Final Viability Condition (as the context requires) has been satisfied together with such reasonable evidence as will enable the Council reasonably to verify such statement
"Viability Test"		the procedure set out at paragraph 4 of Part 2 of Schedule 6 to ascertain whether a Relevant Plot or the Development Area (as the context requires) is Viable
"Warranties"		collateral warranties to be given by each member of the Professional Team, the Building Contractor, each Principal Sub-Contractor and the Developer's Agent in accordance with Schedule 14
"Waste"		any discarded, unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value
"Working Day"		any day from Monday to Friday (inclusive) excluding statutory bank and public holidays of England and Wales and the period between and including 23 rd December and 2 nd January and references to "Working Days" are to be construed accordingly

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses Schedules and Appendices are to clauses, Schedules and Appendices to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 unless otherwise Indicated, references to Sections are to sections of the Business Plan;
- 1.2.4 the Schedules (including the Business Plan) are incorporated in this Agreement and the Parties shall comply with their obligations in them;
- 1.2.5 references to any statute or statutory provision include references to:
 - 1.2.5.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
 - 1.2.5.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
- 1.2.6 references to the Development Area or a Plot or a Sub-Plot include any part of them;
- 1.2.7 references to the Parties means the Council and the Developer;
- 1.2.8 "including" means "including, without limitation,";
- 1.2.9 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the Council and all reasonable and proper costs, damages, expenses, liabilities and losses incurred by the Council;
- 1.2.10 if there is more than one Developer, the obligations which they undertake can be enforced against them all jointly or against each individually;
- 1.2.11 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected; and
- 1.2.12 In the case of any conflict or ambiguity between the provisions in the body and/or schedules of this Development Partnership Agreement (excluding for these purposes the Business Plan) and the Business Plan

or any other documents ancillary to this Development Partnership Agreement) the provisions of the body and/or schedules of Development Partnership Agreement are to prevail.

- 1.3 The Particulars form part of this Agreement and words and expressions set out in the Particulars are to be treated as defined terms in this Agreement.
- 1.4 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 1.5 This Agreement is a "development agreement" for the purposes of Article 6 Construction Contracts (England and Wales) Exclusion Order 1998.

2. OBJECTIVES AND THE BUSINESS PLAN

- 2.1 The Objective for the Development is the wholesale regeneration of the Development Area before the expiry of the Development Period, maximising value for both the Council and the Developer whilst using any public sector investment efficiently and achieving the Minimum Requirements. The regeneration will include the construction of new high quality mixed tenure homes, community and commercial space and public realm and the delivery of a range of community and economic benefits that will support the well-being of existing and new residents.
- 2.2 The Council and the Developer agree to work together and the Developer has been selected by the Council to carry out and complete the Development in accordance with and on the terms of this Agreement (including the Business Plan) so as to achieve the Objective for the Development within the Development Period and by the relevant Milestone Dates and Longstop Dates for each Plot.
- 2.3 The Council and the Developer will act in good faith in seeking to deliver the Objective and in performing their obligations under this Agreement.
- 2.4 It is acknowledged that the Business Plan has been developed by the parties to provide the framework for the delivery of the Objective and both parties will use all reasonable endeavours to fulfil the intentions of the Business Plan so as to the achieve the Objective, including (but not limited to) complying with the requirements of the sections of the Business Plan respectively identified in the Business Plan as:
 - 2.4.1 The mobilisation programme;
 - 2.4.2 The implementation strategy: land assembly;
 - 2.4.3 The implementation strategy: development;

- 2.4.4 The implementation strategy: interim management;
 - 2.4.5 The design and technical strategy;
 - 2.4.6 The marketing, communications and involvement strategy;
 - 2.4.7 The community and economic well-being strategy;
 - 2.4.8 The area management strategy;
 - 2.4.9 The implementation models;
 - 2.4.10 The financial management and financial model;
 - 2.4.11 The risk log; and
 - 2.4.12 The Key Performance Indicators (KPIs).
- 2.5 All changes to the Business Plan are to be made in accordance with the Change Procedure (and for the avoidance of doubt proposed changes to the Business Plan are not matters that are referable to a Specialist appointed in accordance with clause 14 of this Agreement).
3. DEVELOPER'S WARRANTIES
- 3.1 The Developer warrants to the Council that:
- 3.1.1 the Developer is a validly existing charitable trust duly incorporated under the law of England and is a "Registered Provider" as defined by section 80 of the Housing and Regeneration Act 2008;
 - 3.1.2 the execution of this Agreement by the Developer has been validly authorised;
 - 3.1.3 the Developer's obligations under this Agreement constitute valid legal and binding obligations of the Developer enforceable against the Developer in accordance with the terms of this Agreement;
 - 3.1.4 neither the execution of this Agreement by the Developer nor compliance with its terms will:
 - 3.1.4.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other obligation or duty to which the Developer is bound; or
 - 3.1.4.2 cause any limitation on any of the powers whatsoever of the Developer, or on the right or ability of the directors of the Developer to exercise such powers, to be exceeded;

- 3.1.5 the Developer is not knowingly in default under any law or enactment or under any deed, agreement or other obligation or duty to which the Developer is bound so as to affect adversely its ability to comply with the terms of this Agreement;
- 3.1.6 all consents (other than those related to planning including but not limited to any Planning Agreement, Planning Application or Planning Permission, Developer Funding Agreement, CPO Indemnity Agreement, Priority Agreement, Step-In Agreement) required by the Developer for the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn;
- 3.1.7 the Developer is not under any statutory obligation to undertake the Development Works or any part of them;
- 3.1.8 no litigation or administrative or arbitration proceedings before any court, tribunal, Government authority or arbitrator is presently taking place, pending or, to the knowledge of the Developer, threatened which might have a material adverse effect on its business, assets, condition or operations or might affect adversely its ability to comply with its obligations under this Agreement;
- 3.1.9 all information, documents and accounts of the Developer submitted to the Council for its appraisal of the Development (including but not limited to the Developer's bid submission and response to the pre-qualifying questionnaire submitted pursuant to the Council's procurement for the Development) for the purposes of this Agreement are true and accurate and:
 - 3.1.9.1 no change has occurred since the date on which such information, documents and accounts was supplied which renders them untrue or misleading in any respect; and
 - 3.1.9.2 there has been no material adverse change in the business, assets, operations or prospects of the Developer since such information, documents and accounts was provided;
- 3.1.10 the Developer has disclosed to the Council all information which would or might reasonably be thought to influence the Council into entering into this Agreement;
- 3.1.11 no person having any charge or other form of security over the Development Area or any other assets of the Developer has enforced or given notice of its intention to enforce such security;

3.1.12 the Developer is not, after due enquiry, aware of anything which materially threatens the success or successful completion of the Development; and

3.1.13 no Event of Default has occurred or is continuing.

4. CONDITIONS PRECEDENT AND PLOT CONDITIONALITY

4.1 The obligations (inter alia) to procure entry into each Building Contract and Appointments in Schedule 15, to carry out, or procure the carrying out of, the Development Works contained in Schedule 14, and to grant the leases referred to in Schedule 12 are subject to a) the Conditions Precedent being previously satisfied (or where permitted by this Agreement, waived) and (b) for each Relevant Plot the Plot Conditions being previously satisfied (or where permitted by this Agreement, waived) on the terms of this Agreement in accordance with the relevant Milestone Dates subject to the Longstop Dates.

4.2 The Conditions Precedent are:

4.2.1 the obtaining of the Satisfactory Hybrid Planning Permission in accordance with Schedule 8; and

4.2.2 the viability for the development of the whole of the Development Area being agreed or determined as "Viable" by satisfaction (or where expressly permitted by this Agreement, waiver) of the Development Viability Condition pursuant to Schedule 6.

4.3 The Plot Conditions for each Plot are:

4.3.1 (save for the First Development Site where the requirements of this clause are deemed satisfied at the date of this Development Partnership Agreement) the Conditions Precedent being satisfied (and, in the case of the Condition Precedent set out at clause 4.2.2, the Viability Test being repeated as soon as reasonably practicable after the satisfaction of the Plot Conditions (excepting this clause 4.3.1), and the development of the whole of the Development Area (excluding any Plots where the Unconditional Date has arisen) being agreed or determined to be "Viable" as defined pursuant to Schedule 6 pursuant to such Viability Test);

4.3.2 for the First Development Site the First Development Site Planning Condition being satisfied, and for each Subsequent Plot the Plot Planning Condition being satisfied for the Relevant Plot;

4.3.3 the satisfaction (or where permitted by this Agreement, waiver) of the Funding Condition for the Relevant Plot in accordance with Schedule 7

(provided that there shall be no Funding Condition for the First Development Site);

- 4.3.4 the satisfaction of the Plot Implementation Plan Condition for the Relevant Plot in accordance with Schedule 11;
 - 4.3.5 the satisfaction of the Vacant Possession Condition for the Relevant Plot in accordance with Schedule 9;
 - 4.3.6 the satisfaction of the Demolition Condition for the Relevant Plot in accordance with Schedule 10; and
 - 4.3.7 the satisfaction of the Plot Final Viability Condition in accordance with Schedule 6 (provided that there shall be no Plot Final Viability Condition for the First Development Site).
- 4.4 The Developer and the Council are to comply with their respective obligations in Schedules 2, 6, 7, 8, 9, 10 and 11 to procure that the Conditions Precedent and the Plot Conditions are satisfied on the terms of this Agreement.
- 4.5 The Developer is to use reasonable endeavours to satisfy the Conditions Precedent as soon as reasonably practicable after the date of this Agreement in accordance with the Business Plan and the other terms of this Agreement.
- 4.6 The Developer is to use reasonable endeavours to satisfy all of the Plot Conditions for the First Development Site:
- 4.6.1 as soon as reasonably practicable after the satisfaction of the Conditions Precedent and in any event by the relevant Longstop Date; and
 - 4.6.2 in accordance with the Phasing Schedule and the Plot Implementation Plan for the First Development Site
- 4.7 Subject to the Unconditional Date occurring for the First Development Site the Developer is to use all reasonable endeavours to satisfy the Plot Conditions for all other Plots within the Development Area as soon as reasonably practicable and in accordance with the Phasing Plan and the Plot Implementation Plan for the Relevant Plot
- 4.8 Immediately following the satisfaction of a Condition Precedent or Plot Condition by the Council, the Council is to provide to the Developer such written evidence as the Developer reasonably requires that the relevant condition has been satisfied on the terms of this Agreement
- 4.9 Immediately following the satisfaction of a Condition Precedent or Plot Condition by the Developer, the Developer is to provide to the Council such written

evidence as the Council reasonably requires that the relevant condition has been satisfied on the terms of this Agreement

- 4.10 The Developer is to give written notice to the Council within ten Working Days of the last of the Conditions Precedent or the Plot Conditions for a Relevant Plot being satisfied.
- 4.11 No Condition Precedent or Plot Condition may be waived unless expressly permitted by this Agreement or otherwise without the agreement of the parties

5. DEVELOPMENT

- 5.1 The Developer is to use reasonable endeavours to procure that all the Development Conditions for each Relevant Plot are satisfied as soon as reasonably practicable after the Unconditional Date for the Relevant Plot and subject to all of the Development Conditions for the Relevant Plot being satisfied on the terms of this Agreement the Developer is to carry out or procure that the Development Works are carried out in accordance with Schedule 14.
- 5.2 The Development Conditions for each Relevant Plot are:
 - 5.2.1 all Statutory Consents that are required before beginning the Development Works being obtained in accordance with paragraph 1 of Schedule 13;
 - 5.2.2 compliance with the CDM Regulations in accordance with paragraph 2 of Schedule 13.
- 5.3 The Developer and the Council are to comply with their respective obligations in Schedule 13 to procure that all of the Development Conditions for the Relevant Plot are satisfied on the terms of this Agreement.
- 5.4 Within five Working Days of the satisfaction of each Development Condition for the Relevant Plot, the Developer is to provide to the Council such written evidence as the Council reasonably requires that the relevant Development Condition has been satisfied on the terms of this Agreement.
- 5.5 The Developer is to give written notice to the Council within five Working Days of the last of the Development Conditions being satisfied for the Relevant Plot.
- 5.6 The Developer covenants with the Council that it will not use or permit the Relevant Plot to be used for any purpose other than a) for the carrying out of the Development Works; or b) pursuant to an Interim Use Lease before the later of:
 - 5.6.1 the Date of Practical Completion for the Relevant Plot; and

- 5.6.2 the date of grant of the Plot Lease or where there are Sub-Plots within the Plot, the relevant Sub-Plot Lease for the Relevant Plot;

6. PHASING

- 6.1 The Developer shall keep the Phasing Schedule updated quarterly after the date of this Agreement and shall promptly inform the Council in writing where it considers any Milestone or Milestones are likely not to be achieved by the relevant Milestone Dates and/or Longstop Dates, and shall procure that the Steering Group and Implementation Group are notified at the next meeting of the relevant group.
- 6.2 From the satisfaction of the Plot Implementation Plan Condition for any Plot the Developer shall keep the relevant Plot Implementation Plan updated quarterly and shall promptly inform the Steering Group and Implementation Group where it considers the Milestone within the Plot Implementation Plan are likely not to be achieved by the relevant Milestone Dates and/or Longstop Dates.
- 6.3 If the Developer proposes a change to the Plot Plan, Phasing Schedule (including any change to any of the dates set out in the Phasing Schedule or Milestones) or any approved Plot Implementation Plan then it must obtain the Council's written consent in accordance with the Change Procedure (and the Developer shall not have the right to refer the matter to a Specialist appointed in accordance with clause 14) provided that such change must be consistent with the Minimum Requirements and further provided that the following requirements are not breached:
- 6.3.1 subject to clause 6.3.2 below, the minimum size of any Building on a Plot is not to be more than 7.5% less in Internal Area than the target size in Internal Area of the relevant Plot set out in the Phasing Schedule, unless agreed by the Steering Group.
- 6.3.2 clause 6.3.1 is subject to the proviso that at any time the Plots being developed at the Development Area (including any Plots where Practical Completion has occurred) are not to be more than 5% less in Internal Area measured in aggregate across all aforesaid Plots than the aggregate target size in Internal Area of the Relevant Plots set out in Phasing Schedule unless agreed by the Steering Group.
- 6.3.3 (save in relation to the First Development Site and Plot 18 which are excluded for the purposes of this clause) the Developer shall procure that Practical Completion of no less than 30% of the Internal Area of all Plots subject to ongoing Development Works has occurred before the next Plot is commenced and that no more than 3 Plots are subject to ongoing Development Works at any one time.

- 6.4 The Parties agree and acknowledge that The Plot Plan, Phasing Schedule and any Plot Implementation Plan must support and not conflict or detrimentally affect the Implementation Strategy and the Re-Housing Specification.

7. FINANCIAL PROVISIONS

- 7.1 The Developer is to pay the Fixed Payments, the Premiums, the Additional Payments, and the Overage to the Council in accordance with the requirements of Schedule 4.

- 7.2 The Developer is to procure the Development Account is maintained and record the Development Costs in accordance with Schedule 5.

8. LICENCE TO OCCUPY

- 8.1 The Council grants a non-exclusive licence to the persons listed in clause 8.2 to enter and remain on those parts of the Development Area necessary for the Developer to have access for the purposes of this Agreement and in the ownership and control of the Council from time to time subject to the extent of such licence being previously agreed with the Council (acting reasonably) such licence to be granted in respect of the relevant part of the Development Area for the period from and including the date on which it is necessary for the Developer to have access to such parts of the Development Area for the purposes set out in clause 8.4 and subject to clause 8.6.

- 8.2 The licence in clause 8.1 is granted to:

8.2.1 the Developer, the Developer's Principal Agent, Developer Partner;

8.2.2 the Building Contractor, its sub-contractors, including Principal Sub-Contractors, and their respective agents and employees; and

8.2.3 the Professional Team.

- 8.3 The licence in clause 8.1 permits those exercising the rights to bring upon the Development Area vehicles, plant, equipment and materials required for purposes set out in clause 8.4.

- 8.4 The licence granted in clause 8.1 is granted for the purposes only of:

8.4.1.1 satisfying any Conditions Precedent, Plot Conditions and Development Conditions;

8.4.1.2 carrying out surveys, environmental, soil and other tests, investigations and inspections and measurements; and

8.4.1.3 preparing an environmental impact or other studies.

- 8.5 The licence granted in clause 8.1 does not confer on the Developer or any other person any legal or equitable right, title, interest or estate in the Development Area.
- 8.6 The licence granted in clause 8.1 ends on the earlier of the following dates:
- 8.6.1 the date on which this Agreement ends or (in respect of a Relevant Plot) the date on which the Agreement ends in respect of that Plot; and
 - 8.6.2 the Date of Actual Completion of the Building Lease for the Relevant Plot or any Interim Use Lease (as the case may be).
- 8.7 When the licence in clause 8.1 ends then, unless completion of the Building Lease of the Relevant Plot has been completed, the Developer is to procure that the Development Area is vacated by the persons listed in clause 8.2 and that all vehicles, plant, equipment and materials belonging to them are removed from the Development Area.
- 8.8 Where the Developer requires a licence pursuant to this clause 8 it must give the Council as much notice as is practicable and provide as much information as the Council reasonably require to enable the Council to consider the request, such information to include a scaled plan of the area required and details of the certificates and insurance cover of any person intended to access pursuant to the licence.
9. INSURANCE
- 9.1 It is agreed that the risk of damage to or loss or destruction of each Plot on which the Building Lease has been granted has occurred and all other parts of the Development Area occupied by the Developer or those authorised by it, including all buildings, fixtures, fittings, plant and equipment, is to pass to the Developer on the Completion Date of the Building Lease and the Developer shall forthwith notify the Council of the occurrence of the grant of the Building Lease for each part of the Development Area.
- 9.2 Until the Building Contractor becomes responsible for the insurance of the Development Works under the Building Contract, the Developer is to insure such parts of the Development Area as are subject to any Building Lease:
- 9.2.1 in the joint names of the Developer and the Council and such other persons as the Developer requires;
 - 9.2.2 in its Reinstatement Cost;
 - 9.2.3 against the Insured Risks;

- 9.2.4 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and
 - 9.2.5 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.
- 9.3 The Developer is to insure or procure that the Building Contractor (and where more than one is on site at the same time this need only be one of them) keeps the Relevant Plot and all other parts of the Development Area occupied by the Developer or those authorised by it and all unfixed goods and materials insured under the terms of the Building Contract:
 - 9.3.1 in their Reinstatement Cost;
 - 9.3.2 against the Insured Risks;
 - 9.3.3 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and
 - 9.3.4 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.
- 9.4 The Developer is to use reasonable endeavours to procure that any exclusion in respect of terrorist activity is removed from the insurance maintained under clauses 9.1, 9.2 and 9.3.
- 9.5 The Developer is to use reasonable endeavours to procure that the insurers under clauses 9.1, 9.2 and clause 9.3 undertake with the Council not to cancel the insurance without first giving to the Council 20 Working Days' prior written notice of their intention to do so.
- 9.6 With the exception of any insurances required by law, the insurance referred to in clauses 9.1, 9.2 and clause 9.3 shall:
 - 9.6.1 provide for non-vitiation protection in respect of any claim made by the Council as co-insured;
 - 9.6.2 contain a clause waiving the insurers' subrogation rights against the Council; and
 - 9.6.3 provide for payment of any proceeds received by the Developer to be applied in accordance with this clause 9.
- 9.7 The Developer is promptly to provide the Council with:

- 9.7.1 a copy of the insurance policies maintained under clauses 9.1, 9.2 and 9.3 and evidence for the payment of the premium for the insurance;
 - 9.7.2 evidence of its renewal when requested by the Council; and
 - 9.7.3 any endorsements or other amendments to the relevant policies of insurance or of any notification or other correspondence received from the insurers.
- 9.8 If the Development Area or the Development Works are damaged or destroyed by any of the Insured Risks:
 - 9.8.1 the Developer is or is to procure that the Developer's Principal Agent (dependent upon who has placed the relevant Building Contracts) is to use reasonable endeavours promptly to obtain the maximum payment of insurance moneys;
 - 9.8.2 the Developer and/or the Developer's Principal Agent (dependent upon who has placed the relevant Building Contracts) is to procure that the Building Contractor rebuilds, repairs or otherwise reinstates the Development Works and the Relevant Plot(s) in a good and substantial manner in accordance with the terms of this Agreement and the Building Contract to the reasonable satisfaction of the Council;
 - 9.8.3 if the moneys received in respect of such insurance are insufficient for the purpose of rebuilding, repairing or reinstating the Development Works and the Relevant Plot(s), the Developer or the Developer's Principal Agent (dependent upon who has placed the relevant Building Contracts) is to make good any deficiency out of its own moneys; and
 - 9.8.4 Practical Completion is not to take place unless and until the rebuilding, repairing and reinstating of the Development Works and the Relevant Plot(s) has been completed.
- 9.9 During the carrying out of the Development Works, the Developer is to procure that there is maintained public liability insurance against liability to the public and to third parties in such sum as may be prudent having regard to the extent of the proposed Development Works being not less than £10,000,000 in respect of any claim.
- 9.10 If the Developer does not insure or procure all or any of the insurances required by this clause 9 or fails to produce reasonable evidence that such insurances are in force, the Council may itself effect such insurance cover as it may consider prudent and the cost of so doing together with the Council's management and

administrative costs for so doing will be payable by the Developer to the Council on written demand.

10. LIMITATION OF DEVELOPER'S LIABILITY

10.1 Subject to clauses 10.2 and 10.3 the Developer is not to be relieved of liability for any breach of its obligations in this Agreement by:

- 10.1.1** completion of the grant of a Building Lease for a Plot;
- 10.1.2** completion of the grant of Interim Use of Lease;
- 10.1.3** completion of the grant of a Plot Lease, Sub-Plot Lease, or NASS Lease;
- 10.1.4** the consent or approval of the Council to any matter under this Agreement, whether or not this Agreement expressly requires the consent or approval of the Council;
- 10.1.5** the issue of any Certificate of Practical Completion or the Date of Wind and Watertight Certification or the Date of Topping Out arising or the absence of any objection by the Council to the relevant certificate being issued or the terms which it contains;
- 10.1.6** the making good of defects by the Building Contractor under the terms of the Building Contract;
- 10.1.7** the grant of any lease;
- 10.1.8** the payment of the Overage;
- 10.1.9** the right of the Developer to make a claim against the Building Contractor or members of the Professional Team;
- 10.1.10** any delay or neglect by the Council in enforcing the terms of this Agreement or any time allowed by the Council for their performance;
- 10.1.11** any variation of the terms of this Agreement;
- 10.1.12** any legal limitation, immunity, disability, incapacity of other circumstances relating to the Developer, whether or not known to the Council; or
- 10.1.13** anything else which would have released the Developer whether by the variation of the Developer's obligations or by the conduct of the parties.

- 10.2 Notwithstanding clause 10.1 the Developer shall be released from all liability to the Council:
- 10.2.1 in respect of each element of the Council Works and Council Public Realm on the later of:
- 10.2.1.1 the date which is the eleventh anniversary of the date of issue of the Certificate of Making Good Defects in respect of those works; and
- 10.2.1.2 the delivery by the Developer to the Council of all the Warranties in respect of the Council Works and Council Public Realm;
- 10.2.2 in respect of each element of the Development Works (other than the Council Works and any Council Public Realm) on the later of the date which is:
- 10.2.2.1 one year after the issue of the Certificate of Making Good Defects in respect of the relevant Development Works; and
- 10.2.2.2 the delivery by the Developer to the Council of all the Warranties in respect of the Development Works (other than the Council Works and Council Public Realm).
- 10.3 Clause 10.2 shall not apply in respect of:
- 10.3.1 claims begun before the end of the Liability Period;
- 10.3.2 any rights of action in respect of which the Council has given written notice to the Developer before the expiry of the Liability Period of its intention to make a claim;
- 10.3.3 any outstanding liability under any Statutory Consent or Infrastructure Works agreement or Planning Agreement; and
- 10.3.4 any landscaping which remains to be carried out in the next planting season.
11. DEVELOPER'S INDEMNITY
- 11.1 The Developer is to indemnify the Council in respect of any of the following matters arising directly or indirectly in relation to the Development Works, the Development Area or any operations on the Development Area:
- 11.1.1 the death of, injury to or accident to any person;

- 11.1.2 the damage to or loss of any property;
- 11.1.3 any breach of the Statutory Consents or Statutory Requirements;
- 11.1.4 the infringement of the rights of any third party caused by the carrying out of the Development Works;
- 11.1.5 any nuisance or disturbance suffered by any third party caused by the carrying out of the Development Works except where such nuisance or disturbance suffered by any third party has been caused by the Council; and
- 11.1.6 any fine or penalty provided that such fine or penalties arising from the act default or omission of the Developer or their servants agents or employees.

12. TAX

12.1 The Council warrants to the Developer that:

- 12.1.1 for the First Development Site only that it will not exercise an Option to Tax.
- 12.1.2 it is a taxable person for the purposes of VAT and, if so registered at the date of this Agreement, it is registered with VAT registration number 235 8294 44.

12.2 For Subsequent Plots the Council may elect to exercise an Option to Tax by serving written notice on the Developer at any time before the first interim viability assessment is carried out pursuant to paragraph 2 of Schedule 5 for any Plot (provided that the Council may change its decision where the Developer does not proceed to take further steps (and notify the Council of such steps) in relation to a Plot on the basis of the interim viability assessment within 40 Working Days of issue of the written notice).

12.3 Sums payable under this Agreement are exclusive of VAT. Where, under the terms of this Agreement, a supply is made that is subject to VAT, the person receiving the supply is to pay the VAT to the person making the supply and a valid VAT invoice is to be issued by the person making the supply.

12.4 The Developer warrants to the Council that where the Council elects to exercise an Option to Tax on a Subsequent Plot or Plots pursuant to clause 12.2 it will not issue a certificate pursuant to paragraphs 6 or 10 Schedule 10 to the VATA. If the Developer breaches this warranty, it is to indemnify the Council against all irrecoverable VAT, costs, penalties and liabilities that the Council incurs as a result of the issue of a certificate pursuant to either of those paragraphs.

- 12.5 For the avoidance of doubt the Developer is to procure there is discharged all tax liabilities (whether by stamp duty land tax, VAT or otherwise) due from the Developer (if any) and ensure the discharge of any due from either the Developer's Principal Agent or any Associated Company either arising on them consequent upon the acquisition of a Building Lease, NASS Lease, Plot Lease or otherwise arising on the Developer or the Developer's Principal Agent or any Associated Company pursuant to this Agreement or due to any of them undertaking or procuring the Development Works.

13. DEFAULT

- 13.1 Subject to the terms of any Step-In Agreement, following an Event of Default (excluding that at paragraph (g) of that defined term):

13.1.1 the Developer will on demand pay to the Council any Overage then due but not paid and any other payments due pursuant to this Agreement and the total amount of Development Costs incurred by or on behalf of the Council in carrying out and completing the Development Works on any Plot where the Developer has Commenced Development Works and where the Council is exercising its rights under this clause 13 provided that:

13.1.1.1 such costs are supported by the Council providing reasonable evidence; and

13.1.1.2 the Council uses reasonable endeavours to mitigate such costs.

- 13.2 Upon an Event of Default arising but subject to the terms of the relevant Step in Agreement to the intent that such agreement takes priority in all respects and the appointment in this clause is contingent on the Step-in Agreement ceasing to be capable of exercise or not being exercised in accordance with its terms, the Developer irrevocably appoints the Council by way of security to be the attorney of the Developer with full power and authority to do all acts and things and execute and deliver in the name of the Developer all deeds and documents which may be necessary to give effect to the terms of this Agreement.

- 13.3 Subject to the terms of any Step-In Agreement to the Intent that such agreement takes priority in all respects and the appointment in this clause is contingent on the Step-In Agreement ceasing to be capable of exercise or is not being exercised in accordance with its terms, where an Event of Default (excluding that at paragraph (g) of that defined term) has occurred the Council:

13.3.1 is entitled to terminate this Agreement on giving to the Developer not less than 20 Working Days notice in writing;

13.3.2 may following termination take down any part of the Development Works where they are only partially constructed in relation only to the Relevant Plot or Sub-Plot in respect of which the Event of Default has occurred and recover the proper cost of doing so from the Developer upon demand together with interest thereon at the Contract Rate from the date of demand until the date of payment provided that:

13.3.2.1 the Council uses all reasonable endeavours to mitigate such costs; and

13.3.2.2 the taking down of the Development Works is strictly necessary for the purposes of compliance with relevant health and safety requirements or to facilitate the future use development or disposal of the Relevant Plot or Sub-Plot; and

13.3.3 may terminate the Building Lease and any Interim Use Leases for any Relevant Plot(s);

13.4 On termination of this Agreement the Developer shall procure that:

13.4.1 the Development Area is delivered with vacant possession (save for any Plots which have been practically completed and are subject to Sub-Plot Leases or Plot Leases where such Plots will be delivered subject to such Plot Leases or Sub-Plot Leases);

13.4.2 all vehicles plant equipment and materials belonging to them (or controlled by them their contractors employees and agents) are removed; and

13.4.3 any works undertaken are left safe and secure.

13.5 This clause 13 will continue to apply after any rescission or determination of this Agreement.

14. DETERMINATION OF DISPUTES

14.1 If any dispute arises between the Developer and the Council relating to or arising out of the terms of this Agreement save for the matters referred to at clause 14.2, either party may request by notice in writing that the Parties are to refer to their respective chief executives for discussion but if the respective chief executives are unable or unwilling to agree the matter in question within 15 Working Days (or such other period the Parties agree) then the Council or the Developer may give to the other written notice requiring the dispute to be determined under this clause 14. The notice is to:

- 14.1.1 propose an appropriate Specialist which in the case of financial dispute shall be a member of the Institute of Chartered Accountants, in the case of a planning dispute a member of the Bar Council, in the case of disputes over the terms of a Building Lease, Plot Lease, Nominations Agreement, Council Lease, Shared Equity Lease, Shared Ownership Lease, Priority Agreement, Step-In Agreement shall be a member of the Law Society of England and Wales and for any other dispute a member of the Royal Institution of Chartered Surveyors save for any disputes in relation to the Development Works which shall be dealt with by adjudication in accordance with the scheme for Construction Contracts (England and Wales) Regulations 1998 as amended from time to time;
 - 14.1.2 state whether the Specialist is to act as an independent expert or an arbitrator or an adjudicator, having regard to the terms of this clause 14; and
 - 14.1.3 specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 14.2 The provisions of clause 14.1 are not to apply:
- 14.2.1 to any changes relating to the Business Plan or any Plot Implementation Plan, which are to be referred to the Steering Group only and are not to be referred to a Specialist unless the Steering Group agrees;
 - 14.2.2 where this Agreement expressly refers to a matter being determined in accordance with the Change Procedure, save for (a) any changes relating to the Business Plan or any Plot Implementation Plan, and/or (b) where this Agreement expressly refers to a matter being determined in accordance with the Change Procedure; and/or
 - 14.2.3 the construction or interpretation of this Agreement (where such matters cannot be resolved by the parties) may be referred to the Courts.
- 14.3 NOT USED
- 14.4 NOT USED
- 14.5 NOT USED
- 14.6 For the purposes of this clause 14 a "Specialist" is a person:
- 14.6.1 qualified to act as an expert or an arbitrator or an adjudicator in relation to the dispute;

- 14.6.2 having not less than ten years' professional experience; and
- 14.6.3 having practical experience in relation to developments in the nature of the Development and property in the same locality as the Development Area.
- 14.7 The recipient of a notice under clause 14.1 will be deemed to accept the identity of the Specialist and the capacity in which he is to act unless it gives notice in writing to the party serving the notice rejecting one or more of the proposals within five Working Days of receipt of the notice and on the service of a notice rejecting one or more of the proposals clause 14.8 will apply.
- 14.8 Unless the Developer and the Council agree or are deemed to agree the terms for resolving the dispute set out in the notice served under clause 14.1:
 - 14.8.1 any dispute over the type of Specialist appropriate to resolve the dispute or the capacity in which a Specialist is to act may be referred at the request of the Developer or the Council to the President or next most senior available officer of the Royal Institution of Chartered Surveyors who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination and to determine the capacity in which the Specialist is to act; and
 - 14.8.2 any dispute over the identity of the Specialist is to be referred at the request of the Developer or the Council to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Royal Institution of Chartered Surveyors.
- 14.9 The reference to a Specialist is to be made to him as an expert unless:
 - 14.9.1 the dispute is of such a nature that it is not capable of being determined by an expert;
 - 14.9.2 both the Developer and the Council agree, or are deemed to agree, that the Specialist should act as an arbitrator;
 - 14.9.3 this Agreement specifies that the dispute is to be determined by an arbitrator; or
 - 14.9.4 clause 14.10 applies.

14.10 If any dispute raises or relates to the same or similar issues as those which have been or are being submitted to independent determination under the Building Contract or an agreement for lease or agreement for sale, the Council and the Developer will endeavour to appoint the same person acting in the same capacity as may be appointed to resolve the dispute under the Building Contract or the relevant agreement for lease or agreement for sale and to have the dispute proceedings under this Agreement and the Building Contract or the agreement for lease or agreement for sale consolidated.

14.11 Where a Specialist is to act as an independent expert:

14.11.1 the Developer and the Council may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

14.11.2 the Developer and the Council are to have a further ten Working Days to make written comments on each other's representations and will copy the written comments to the other party;

14.11.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

14.11.4 the Specialist is not to take oral representations from the Developer or the Council without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

14.11.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

14.11.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.

14.12 Where a Specialist is to act as an arbitrator:

14.12.1 all submissions made or evidence supplied to him are to be in writing unless the parties agree within ten Working Days of his appointment that this requirement does not apply;

14.12.2 the date of his award will be deemed to be the date on which he serves a copy of the award on the Developer and the Council;

14.12.3 he will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;

14.12.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and

14.12.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.

14.13 Responsibility for the costs of referring a dispute to a Specialist under this clause 14 including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

14.14 Where the Specialist has determined a dispute arising pursuant to this Agreement its decision shall be binding on the parties save in the case of manifest error.

15. CONFIDENTIALITY AND FREEDOM OF INFORMATION

The parties are to comply with the provisions of Schedule 20 in relation to Confidentiality and Freedom of Information.

16. DATA PROTECTION

The parties are to comply with the provisions in Schedule 20 in relation to data protection requirements on the Parties.

17. DEALINGS

17.1 Subject to the terms of this clause 17, this Agreement is incapable of being assigned, charged, held on trust or in any way being dealt with by the Developer.

17.2 The Developer may, with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed, assign or charge the benefit of this Agreement to an Investor subject to the Investor entering into a Step-In Agreement either in the form of the draft Step-In Agreement attached to this Agreement or in such other form acceptable to the Council (acting reasonably) and the Developer covenanting with the Investor and the Council to comply with its obligations in this Agreement notwithstanding its assignment to the Investor.

17.3 An Investor to whom this Agreement is assigned by way of security may in the exercise of its security assign this Agreement to a Nominee subject to a Nominee entering into a direct covenant with the Council to comply with the obligations on the part of the Developer in this Agreement.

17.4 Subject to the terms of the relevant Step-In Agreement the Developer may not create any legal or equitable charge over the any Relevant Plot unless:

- 17.4.1 the legal or equitable charge is being provided to an Investor;
 - 17.4.2 it obtains the prior written consent of the Council, such consent not to be unreasonably withheld or delayed; and
 - 17.4.3 a Priority Agreement is entered into.
- 17.5 The Developer agrees and acknowledges that no Unacceptable Change of Control may occur during the period from the date of this Agreement until the expiry of the last Liability Period for the final Plot of the Development Works to be completed.
- 17.6 Where the Developer wishes to propose a replacement Developer Partner it must notify the Council and it is not to appoint a replacement Developer Partner until such person has been approved by the Council (acting reasonably and without delay).
- 18. NON-ADOPTED SHARED SPACE AND COUNCIL WORKS
 - 18.1 The Developer shall deliver the Non-Adopted Shared Space and shall procure the maintenance of the Non-Adopted Shared Space (either by the NASS Manager or the Developer) in accordance with:
 - 18.1.1 the "Non-Adopted Shared Space- Key Principles and Specification" contained in the Design and Technical Strategy; and
 - 18.1.2 the Area Management Strategy.
 - 18.2 Any Non-Adopted Shared Space in any Plot or Sub-Plot is to be let to the NASS Manager by way of a NASS Lease granted in accordance with paragraph 1.7 of Schedule 12.
 - 18.3 The Developer shall procure delivery of any Council Works in accordance with the requirements of the Business Plan (and the annexures referred to therein) and the provisions of this Agreement.
- 19. SUSTAINABILITY

The Developer will comply with the "Energy and Sustainability approach" in the Design and Technical Strategy in its procurement of any Building Contractor and Professional Team and in dealing with its supply chain.
- 20. INTERIM USES
 - 20.1 The Parties will comply with the Implementation Strategy: Interim Management" section of the Business Plan in relation to any Interim Uses.

- 20.2 The Developer is to use reasonable endeavours to identify Interim Uses for the Development Area throughout the Development Period.
- 20.3 Where the Developer identifies a potential Interim Use it is to provide details of such Interim Use and the proposed occupier to the Council for approval.
- 20.4 Where a proposed occupier has been identified and approved by the Council the Developer is to prepare a draft Interim Use Lease for the Council's approval and the Council is to act reasonably and without undue delay in considering the terms of such Interim Use Lease.
- 20.5 Where the Council approves the proposed Interim Use and the terms of the Interim Use Lease the Parties are to use reasonable endeavours to procure the Interim Use Lease is entered into as soon as reasonably practicable.
- 20.6 Lettings for Interim Uses shall (unless the Parties agree otherwise) be by way of the grant of an Interim Use Lease to be granted in accordance with the provisions of Schedule 12.

21. EFFECT OF THIS AGREEMENT

- 21.1 The parties acknowledge that this Agreement forms the entire agreement between them relating to its subject matter.
- 21.2 No modification, variation or waiver of any of the terms of this Agreement will be effective unless made in writing and signed by the parties to this Agreement.
- 21.3 This Agreement does not create and is not in any circumstances to be taken as having created a partnership between the Council and the Developer.
- 21.4 The Developer is not and will not at any time hold itself out as the agent of the Council for any purposes and under no circumstances will the Developer have the Council to bind the Council or hold itself out to the public, the Building Contractor or any member of the Professional Team as having such authority.
- 21.5 All contracts and agreements entered into by the Developer pursuant to this Agreement will be contracts or agreements between the Developer as principal and the respective third parties and the Council will have no obligation or liability under them.

22. TERMINATION

- 22.1 Subject to clause 22.11, in addition to the rights of termination included at clause 13, if any of the Conditions Precedent or any of the Plot Conditions for the First Development Site have not been satisfied on or before the relevant Longstop Date either the Council or the Developer may end this Agreement by serving written notice on the other unless the reason for the Conditions

Precedent or Plot Conditions not having been satisfied is the act, default or delay of the person seeking to exercise the right to terminate this Agreement under this clause 22.1.

- 22.2 Subject to clause 22.6 and 22.11, if any of the Plot Conditions for a Plot (other than the First Development Site) have not been satisfied on or before the relevant Longstop Date for the occurrence of the Unconditional Date for a Relevant Plot, either the Council or the Developer may end this Agreement by serving written notice on the other unless the reason for the Plot Conditions not having been satisfied is the act, default or delay of the person seeking to exercise the right to terminate this Agreement under this clause 22.2.
- 22.3 This Agreement may be terminated by the Council by serving notice in writing on the Developer if a Milestone (as varied from time by agreement of the Steering Group) or Longstop Date is not satisfied by the corresponding Longstop Date as set out in the table at Schedule 2.
- 22.4 Subject to clause 22.6 this Agreement may be terminated by the Council by serving notice in writing on the Developer if a Plot Planning Application for each Plot has not been submitted by the date 20 Working Days after the date of satisfaction of the Plot Implementation Plan Condition for the Relevant Plot.
- 22.5 Subject to clause 22.6 this Agreement may be terminated by the Council by serving notice in writing on the Developer if Commencement for a Plot has not occurred by the Start Date for the Relevant Plot.
- 22.6 If this Agreement is terminated pursuant to clauses 22.2 22.3 22.4 or 22.5 the Agreement will only be terminated in respect of the Relevant Plot in respect of which the termination event has occurred and all other Plots in respect of which the Unconditional Date has not then occurred but for the avoidance of doubt the obligations and rights of the Council and the Developer under this Agreement shall continue to apply in respect of all other Plots in respect of which the Unconditional Date has then occurred.
- 22.7 It is agreed that the Council is not obliged to enter into a Step In Agreement if this Agreement is terminated by the Council pursuant to the provisions of this clause prior to conclusion of such agreement.
- 22.8 The termination of this Agreement will not prejudice any rights or remedies which any party may have against the others in respect of prior breaches of this Agreement.
- 22.9 On termination of this Agreement the Developer shall procure that:
- 22.9.1 the Development Area is delivered with vacant possession (save where Plot Leases and/or Sub-Plot Leases have been granted, where the

Relevant Plots will be delivered subject to such leases and the remainder of the Development Area will be delivered with Vacant Possession);

22.9.2 all vehicles plant equipment and materials belonging to them are removed; and

22.9.3 any works undertaken by the Developer are left safe and secure.

22.10 The Council may, subject to it contemporaneously serving notice to terminate under this Agreement, require the Developer within 30 Working Days of a written request from the Council and for no consideration to assign to the Council or as the Council otherwise directs the benefit of all or any of the following:

22.10.1 the Building Contract;

22.10.2 the Appointments;

22.10.3 any other contracts or agreements entered into by the Developer in relation to the Development and any agreement ancillary or supplemental thereto (save for any Associated Companies and the Developer Partner);

22.10.4 all the Developer's rights against the Building Contractor and the members of the Professional Team;

22.10.5 all warranties whether as to design, materials or otherwise in relation to the Development and any other guarantees and warranties given by the Building Contractor, Professional Team and suppliers and manufacturers in respect of all plant, machinery and apparatus installed as part of the Development;

22.10.6 all surveys, environmental, soil and other tests, investigations, reports and other studies; and

22.10.7 all rights of copyright (if any) vested in the Developer.

22.11 Where the only reason that the Plot Conditions for the First Development Site have not been satisfied by the relevant Longstop Date for achieving an Unconditional Date for the First Development Site is due to the Vacant Possession Condition not being satisfied both Parties are not to be permitted to terminate for a period of three years after the relevant Longstop Date and are to use such period to seek to either satisfy the Vacant Possession Condition or to make other amendments to the Development proposals and this Agreement (including Longstop Dates) for the First Development Site so as to enable the Vacant Possession Condition to be satisfied or waived in accordance with this

Agreement so that the Development can proceed at the First Development Site Plot and in this event all the Longstop Dates and Milestone Dates shall be extended by the period equivalent to the delay between the relevant Longstop Date for the First Development Site and the date of satisfaction of the Vacant Possession Condition of the First Development Site.

23. STATE AID

It is agreed and acknowledged by the parties that the Council shall not be required to give funding or resources to the Developer in such a way as would confer unlawful State Aid.

24. STATUTORY POWERS

24.1 The Council enters into this Agreement in its capacity as a landowner and notwithstanding any other provisions of this Agreement, the obligations on the Council contained or referred to in this Agreement are without prejudice to the Council's separate role as a local planning authority and nothing contained or implied in this Agreement shall prejudice, affect or restrict the Council's rights, powers, duties and obligations in the exercise of its functions in any statutory capacity and the rights, powers, duties and obligations of the Council under all public and private laws, statutes, byelaws, orders and regulations.

24.2 No approval, consent, direction or authority given by the Council as local planning authority shall be deemed to be an approval, consent, direction or authority given by the Council under this Agreement or vice versa.

24.3 Nothing contained in this Agreement shall override or restrict the operation of any statutory obligations and duties for the time being vested in the Council.

25. EXCLUSION OF LANDLORD AND TENANT ACT 1954 SECURITY OF TENURE

25.1 The Developer and the Council have agreed to exclude the provisions of sections 24 to 28 Landlord and Tenant Act 1954 in relation to the tenancy to be created by the Building Leases for each Plot and Sub-Plot. The Developer confirms that before the date of this Agreement:

25.1.1 the Council served on the Developer a notice ("the Notice") dated 24 April 2014 in relation to the tenancies to be created by the leases of each Plot and Sub-Plot in a form complying with the requirements of Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

25.1.2 the Developer, or a person duly authorised by the Developer, in relation to the Notice made a statutory declaration ("the Declaration") dated 25 April 2015 in a form complying with the requirements of

Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and

25.1.3 where the Declaration was made by a person other than the Developer, the declarant was duly authorised by the Developer to make the Declaration on the Developer's behalf.

25.2 If the parties agree to make alterations to the proposed Building Lease annexed to this Agreement or the Council otherwise reasonably considers it is necessary to do so the Developer and the Council agree as a pre-condition to the grant of the lease to take all such steps as may be necessary to ensure that the provisions of sections 24 to 28 Landlord and Tenant Act 1954 are excluded from the lease, including if required by the Council the Developer serving a new statutory notice and the Developer making a new statutory declaration in respect of the form of Building Lease to be entered into.

26. TUPE

The Parties are to comply with their respective obligations in Schedule 22.

27. INCORPORATION OF SCHEDULES

The provisions of the Schedules and the Business Plan are to apply as if incorporated in full in the main body of this Agreement and each of the Parties covenants duly and promptly to perform its covenants and obligations under each and all of the Schedules and the Business Plan.

28. ENFORCEMENT

28.1 This Agreement is to be governed by and interpreted in accordance with English law.

28.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

28.3 The Developer appoints the Developer's Solicitors as their agent for the service of any notices or proceedings relating to this Agreement.

29. VARIATIONS

The parties hereto may vary this agreement subject to the prior written approval of the other.

30. EXECUTION

30.1 The Developer and the Council have executed this Agreement as a deed on the date set out in the Particulars.

- 30.2 Any person who witnesses the sealing of this Agreement is to be treated as having signed this Agreement for the purposes of section 2 Law of Property (Miscellaneous Provisions) Act 1989.

SCHEDULE 1

Collaboration and Steering Group procedure

1. Definitions

In this Schedule the following words and expressions have the following meanings:

"Business Plan Delivery Mechanisms" any section of the Business Plan (as may be amended from time to time) headed "delivery mechanism"

"Business Plan Key Principles" any section of the Business Plan (as may be amended from time to time) headed "key principles"

"Business Plan Specifications" any section of the Business Plan (as may be amended from time to time) headed "specification"

"Delivery Teams" any sub-groups to be formed by the Implementation Group in accordance with the provisions of paragraph 3.2.5 of this Schedule

"Design Director" such suitably qualified and experienced person in matters of design as is appointed by the Developer as "Design Director" from time to time and approved by the Council (acting reasonably), such person to have the responsibilities of the Design Director set out at paragraph 4.1 of this Schedule

"Developer Representative" Partner such senior role with responsibility for the Development at the Developer Partner as the Developer Partner notifies to the parties from time to time

"Residents' Group" the existing residents' management group at the Estate known as the Regeneration Sub-Group that reports to the board of the Creation Trust and/or any other representative group set up by the residents of the Development Area or any part thereof

"Steering Group"

the Steering Group to be established in accordance with the provisions of this Schedule, and which is at any time is to comprise the key personnel at the Council and the Developer who are to be responsible for driving forward the strategy and co-ordination of the delivery of the Development and for reviewing progress of the Development against the Business Plan

"Steering Group Approval"

approval by both the Council's Representative and the Developer's Representative in accordance with the Change Procedure

"Steering Group Objectives"

to monitor and provide a forum to discuss the performance of the parties' obligations under this Agreement, and in particular to monitor progress against:

- (a) the Business Plan and any Plot Implementation Plans and the Milestones, and
- (b) to measure progress against the KPIs and the payment of any payment from the KPI Incentive Fund, and to review the effectiveness of the KPIs as a mechanism to incentivise delivery and best practice for both Parties;
- (c) to report on progress in relation to the delivery of the Re-Housing Specification and the Community and Economic Well-being Strategy;
- (d) to ensure that the Minimum Requirements and Milestones are met;
- (e) to ensure successful community engagement with the existing residents' and new residents and consider any representations made by the Residents' Group and any

other stakeholders;

- (f) to review and consider any changes to the Business Plan and any Plot Implementation Plan as part of the annual review of the plan at the Business Plan Review Meeting;
- (g) where a Plot fails to achieve Viability to consider any revisions to the Plot Implementation Plan for the purposes of paragraph 4.8 of Schedule 6;
- (h) to discuss any strategic matters that relate to the Agreement and the Development;
- (i) to seek to resolve any disputes that may arise between the parties, so as to avoid, where possible, the need for formal referral to a Specialist; and
- (j) such other strategic or monitoring objectives as the Council and Developer may identify during the Development Period.

2. Steering Group

- 2.1 On the date of this Agreement the Council and the Developer are to establish the Steering Group and from such date both parties are to use all reasonable endeavours to procure that the Steering Group carries out the Steering Group Objectives and otherwise complies with the requirements of this Schedule.
- 2.2 The Steering Group shall (as a minimum) be made up of the Council's Director of Regeneration (or such other senior officer at the Council as may be notified by the Council to the Developer in writing from time to time) as "Council's Representative" and the Developer's "Group Development Director" or equivalent role as the "Developer's Representative".
- 2.3 The Council is to procure a) a senior housing management officer and b) a senior marketing, communications and involvement officer in each case with responsibility for the Development Area attends all of the meetings of the Steering Group, and the Developer is to procure a) equivalently senior representative of the Developer with responsibility for the whole of the

Development Area for housing management and b) the Project Director and c) the MCI Director attend the Steering Group meetings.

- 2.4 Additional representatives of the Council and the Developer may attend the Steering Group meetings but the Steering Group is not to be quorate without both the Council's Representative and Developer's Representative (or their appointed proxies as permitted by paragraph 2.11), and (unless otherwise agreed by the Parties) only the Council's Representative and Developer's Representative are to have the right to vote on any decision made by the Steering Group. At every meeting the Council and Developer shall have one vote each, with no casting vote.
- 2.5 It is proposed that the Developer's Representative and the Council's Representative are to have delegated authority from the Developer and the Council respectively to make most decisions contemplated to be required at Steering Group meetings without the need for further authority, to ensure the effective delivery of the Development in accordance with this Agreement and the Milestones. Where major decisions (being decisions which either the Developer's Representative or the Council's Representative does not have authority to make or elects not to make at the relevant meeting) do need further ratification, the relevant party is to endeavour to procure that this be obtained within six weeks of the relevant meeting (although it is accepted that neither party can fetter itself as to whether the ratification will be forthcoming).
- 2.6 At its Inaugural meeting (which must take place within the first ten Working Days after exchange of the Agreement) the Steering Group is to review the Steering Group Objectives and agree any additional Steering Group Objectives (or any variations to the Steering Group Objectives) and administrative housekeeping procedures so far as they are not set out in the Agreement that the Parties (acting reasonably) consider are required.
- 2.7 The Steering Group Objectives and the administrative procedures are to be reviewed by the Parties every twelve months at the Business Plan Review Meeting.
- 2.8 The chairperson's role for the Steering Group meetings is to be rotated between the Developer's Representative and the Council's Representative.
- 2.9 The chairperson is to be responsible for chairing the meeting and co-ordinating the discussion of the agenda by the Steering Group.
- 2.10 The chairperson is not to have an additional casting vote, so each Party is equally represented.
- 2.11 The Council's Representative and the Developer's Representative shall each be entitled to appoint a proxy representative to attend meetings and vote on their

behalf. Such proxy is to be of suitable seniority so as to be able to act and vote, and the relevant Party is to procure that any proxy is fully briefed as to the Development and progress against the Milestones.

- 2.12 Where the Council wishes to replace the Council's Representative, or the Developer wishes to replace the Developer's Representative, they may do so provided that such replacement person is of not materially lesser experience and expertise and detailed knowledge of the day-to-day delivery of the Development. The relevant party must notify the other prior to the appointment of the replacement person and have due regard to any representations made in relation to the suitability of the candidate.
- 2.13 Meetings of the Steering Group shall be held at least once every three months at the Council's offices and if either the Council or the Developer reasonably requires on such other occasions and at such other location in London as shall be reasonably agreed between the Developer and the Council on no less than ten Working Days written notice.
- 2.14 Where the Developer's Representative or Council's Representative (or their proxy appointed pursuant to paragraph 2.11) ("the Defaulting Party") does not attend a Steering Group Meeting that meeting will not be quorate and a further meeting may be called by the other Party, with the Defaulting Party and their solicitors being given no less than 20 Working Days written notice of the time and location of the subsequent meeting such written notice to include the words in bold prominently stating "failure to attend the meeting will constitute an Event of Default pursuant to the Development Partnership Agreement made between Southwark Council and Notting Hill Housing Trust relating to the Aylesbury Estate and may lead to termination of such Agreement".
- 2.15 The Project Director will prepare a draft agenda for each meeting and the Developer will use all reasonable endeavours to deliver a copy to the Council at least five Working Days prior to the date of the meeting and the Council shall add to the agenda items any other business which ought to be discussed at such meeting and seek to provide this to the Developer as soon as possible prior to the meeting.
- 2.16 Promptly following each meeting the Developer's Representative will prepare complete and accurate minutes (including a log of all decisions made and action points) and deliver a copy in duplicate to the Council signed on behalf of the Developer by the Developer's Representative. If the Council disputes the content of the minutes it is to notify the Developer and the parties are to seek to agree the form of minutes as soon as reasonably practicable and in any event within 10 Working Days of such notice. Where the minutes have been agreed the Council are to sign and return one copy of the minutes to the Developer for its records.

- 2.17 The Developer shall procure the attendance at such meetings of such of the Developer's personnel and consultants as the Council shall reasonably require having regard to the agenda for that meeting.
- 2.18 At the Steering Group meetings and the annual Business Plan Review Meeting the Developer's Representative will inform the Council's Representative of all material measures taken and stages reached by the Developer in performing its obligations under this Agreement and any material problems or delays affecting the Development.
- 2.19 The Steering Group are to engage with the Residents' Group and any local community stakeholders and ensure that they are kept informed as to progress of the Development. The Residents' Group and stakeholders will not attend actual Steering Group meetings, but the Steering Group will provide a separate update at agreed periods following the Steering Group meeting.
3. Implementation Group
- 3.1 On the date of this Agreement the Council and the Developer are to establish the Implementation Group and are to procure that their relevant personnel comply with their obligations to ensure the Implementation Group achieves the objectives set out at paragraph 3.2 below.
- 3.2 The Implementation Group is to have the following objectives:
- 3.2.1 to monitor the day-to-day progress of the Development against the Milestone Dates and Longstop Dates, the Minimum Requirements and the Business Plan;
 - 3.2.2 to ensure effective day-to-day communication between the Developer and the Council for the delivery of the Development to meet not less than monthly to monitor progress and to discuss the implementation of the Development;
 - 3.2.3 to consider any proposed changes to the Business Plan so far as the Implementation Group is permitted to do so pursuant to paragraph 5.2 below;
 - 3.2.4 to brief where required the Steering Group so as to assist the Steering Group in complying with its obligations;
 - 3.2.5 to procure the establishment and reporting of such Delivery Teams as may be necessary to develop and deliver the strategies and other component elements of the Business Plan.

- 3.3 The Developer is to procure that a representative of the Developer Partner who is involved with the day-to-day delivery of the Development attends the meetings of the Implementation Group.
- 3.4 Any disputes at the level of the Implementation Group are to be referred to the Steering Group.
- 3.5 The Implementation Group shall (as a minimum) be made up of senior officers of the Council and the Developer as selected pursuant to the Business Plan. Each Party is to have a single vote in relation to any decisions to be made by the Implementation Group.
- 3.6 The chairperson's role for the Implementation Group meetings is to be rotated between a representative of the Developer and a representative of the Council.
- 3.7 The chairperson is to be responsible for chairing the meeting and co-ordinating the discussion of the agenda by the Implementation Group.
- 3.8 The chairperson is not to have an additional casting vote, so each Party is equally represented.
- 3.9 Meetings of the Implementation Group shall be held at least once every month at the Development Area (in a specific location to be agreed by the Parties (acting reasonably) or if this is not practical at the Council's offices and if either the Council or the Developer reasonably requires on such other occasions and at such other location in London as shall be reasonably agreed between the Developer and the Council on no less than ten Working Days written notice.
- 3.10 Where the Developer or the Council does not attend an Implementation Group meeting that meeting will not be quorate and a further meeting will be called by the other party, with the party in default of its obligation to attend being given reasonable notice of the time and location of the subsequent meeting. If such party still does not attend, other party may require a Steering Group meeting to be held within ten Working Days of written notice pursuant to paragraph 2.13.
- 3.11 The Developer will prepare a draft agenda for each meeting and will use all reasonable endeavours to deliver a copy to the Council at least five (5) Working Days prior to the date of the meeting and the Council shall add to the agenda items any other business which ought to be discussed at such meeting and seek to provide this to the Developer as soon as possible prior to the meeting.
- 3.12 Promptly following each meeting the Developer will prepare complete and accurate minutes (including a log of all decisions made and action points) and deliver a copy in duplicate to the Council signed on behalf of the Developer. If the Council disputes the content of the minutes it is to notify the Developer and the Parties are to seek to agree the form of minutes as soon as reasonably

practicable and in any event within 10 Working Days of such notice. Where the minutes have been agreed the Council are to sign and return one copy of the minutes to the Developer for its records.

- 3.13 Each party shall procure the attendance at such meetings of such of the Developer's personnel and consultants as are reasonably required having regard to the agenda for that meeting.
- 3.14 Save as expressly permitted by paragraph 5.2, the Implementation Group may not make decisions on matters where consent is stated to be required pursuant to this Agreement.

4. Design Requirements and Appointment of Design Director

4.1 Design Director

- 4.1.1 The Design Director has responsibility to Steering Group for ensuring that the Masterplan and the development of each plot are in accordance with the design quality standards contained in the Business Plan.
- 4.1.2 The Design Director will report to the Steering Group and, where requested to do so by either Party, to the Implementation Group.
- 4.1.3 The Design Director's duties will include (amongst others) monitoring the selection and management of the Architects and Professional Team appointed by the Developer, the briefing of the Professional Team and the design development process, so as to ensure consistency in architectural and design quality across the Development Area.
- 4.1.4 The Design Director will hold regular design review meetings with the Developer's Architects and Professional Team to help achieve consistency of approach across the Development Area; this will involve peer reviews to optimise the sharing of knowledge and best practice.
- 4.1.5 The Developer is to give the Council reasonable notice of any design review meetings held with its Architects and Professional Team and is to invite the Council to attend and make representations at such meetings.

5. Business Plan and Change Control

- 5.1 No changes are to be made to the Business Plan without the consent of the Steering Group, save as set out in paragraph 5.2 below.

5.2 Changes to the Business Plan will require Steering Group consent, save that the Implementation Group has delegated authority to approve changes relating to the Business Plan Delivery Mechanisms and the annexures to the Business Plan that are stated to be annexures that may be varied by the Implementation Group provided that for the avoidance of doubt the Implementation Group is not able to approve changes to the Business Plan Specifications and Business Plan Key Principles.

5.3 The Implementation Group will have delegated authority from the Steering Team to consider and (if it consider appropriate) approve the changes permitted by this paragraph provided that:

5.3.1 such changes do not vary (other than the Business Plan Delivery Mechanism) or otherwise detrimentally affect the matters set out in the Business Plan Specifications and Business Plan Key Principles and such changes shall require Steering Group approval;

5.3.2 such changes do not vary or otherwise detrimentally effect the Milestones and Longstop Dates or Minimum Requirements; and

5.3.3 in the case of disagreement within the Implementation Group, such matters are to be referred to the Steering Group.

5.4 Any changes made to the Business Plan (save for those expressly set out above at paragraph 5.2 will require express Steering Group Approval and are to be made in accordance with the Change Procedure.

6. Change Procedure

6.1 Proposed changes to the Business Plan (save for those set out at paragraph 5.2 above) may be put by the relevant Party to the Steering Group for approval at an annual Business Plan Review Meeting provided that changes to the Business Plan may, in time critical circumstances but not otherwise, be put to the Steering Group for discussion and approval in its regular quarterly Steering Group meetings where required.

6.2 Not more than one month before the annual Business Plan Review Meeting the Council and Developer are to respectively hold separate pre-meetings of the relevant personnel of the Parties to discuss the anticipated changes to the Business Plan the strategy for achieving the Objectives, and to report on progress to their senior personnel, so as to enable the Business Plan Review meeting to be as effective as possible.

6.3 Where changes to the Business Plan are put to the Steering Group but the Steering Group are not able to agree the changes, the following procedure is to be followed:

- 6.3.1 the proposed change may at the election of the Developer or the Council be put to the designated chief executives of the Developer and the Council and the Developer and the Council are to act reasonably and in good faith to seek to resolve the dispute within 20 Working Days of referral to them; and
- 6.3.2 if the matters cannot be agreed pursuant to paragraph 6.3.1 within 20 Working Days of referral pursuant to paragraph 6.3.1, the existing Business Plan is to remain in effect and the Parties are to proceed with the Development on the basis of the existing Business Plan at that date.

SCHEDULE 2

Longstop Dates and Milestones

In each case the last Working Day of the relevant month as set out below:

Longstop Dates

First Development Site		
Submission of Planning Application	April	2015
Vacant possession (can be varied by Steering Group by up to three years on basis that Council agree to cover Developer's financing of planning costs for the additional period. Any variation to this date will not cause a variation to Longstop Dates for subsequent Plots)	October	2016
Start of construction (assuming Vacant Possession by October 2016. If the Vacant Possession Longstop is extended then this long stop will be extended accordingly as will Practical Completion of Development Works in respect of the First Development Site only)	December	2018
Practical Completion of Development Works	April	2024

Programme			
Unconditional Date (Satisfaction of Vacant Possession Condition, Planning Condition and Demolition Condition and Commencement of Development Works)			
Plot 4	Phase 2	January	2024
Plot 5		March	2026
Plot 6		July	2027
Plot 7		February	2029
Plots 8/9	Phase 3	September	2032
Plot 10-13	Phase 4	September	2035
Plot 14/15		September	2039
Plot 16/17		March	2041

Start of construction		
All Plots 4-17	12 months after grant of Building Lease on Plot if Demolition Condition has been satisfied or 24 months after grant of Building Lease if Above Ground Demolition is carried out under the provisions of the relevant Building Lease	
Practical Completion		
All Plots 4-17	48 months after grant of the relevant Building Lease for the Relevant Plot if Demolition Condition has	

	been satisfied or 60 months after grant of Building Lease if Above Ground demolition is carried out under the provisions of the relevant Building Lease	
Practical Completion Phase 4	April	2044
Development Longstop	April	2044

Milestones

First Development Sites			
Submission of Planning Application		September	2014
Satisfaction of Vacant Possession Condition		April	2015
Commencement of Development Works		April	2016
Practical Completion of Development Works:			
Plot 1 (sub plots 1,2,5)		July	2018
Plot 2 (sub plot 6)		January	2020
Plot 3 (sub plots 3 and 4)		Dec	2020
Programme			
Unconditional Date (VP, planning consent, demolition, start construction)			
Plot 4	Phase 2	January	2020
Plot 5		March	2021
Plot 6		July	2021
Plot 7	Phase 3	February	2023
Plots 8/9		February	2024
Plot 10-13		June	2025
Plot 14/15	Phase 4	June	2027
Plot 16/17		November	2028

SCHEDULE 3

Minimum Requirements

1. The Developer will develop and complete a minimum number of Residential Units within the Development Area of 3,500 including 100 Residential Units on Plot 18.
2. The minimum number of Residential Units to be delivered on the First Development Site is 800 Units; this total includes the provision of 50 Units for extra care accommodation and 6 Units for people with learning disabilities.
3. The Masterplan will deliver a tenure mix of 50/50 split of Affordable Residential Units and Private Residential Units (calculated by Habitable Room) over the Development Period.
4. The delivery of the minimum requirement (calculated by reference to numbers of Habitable Rooms) of 50% Affordable Residential Units over the whole of the Development Area is to be structured on the basis of a minimum of 50% Affordable Residential Units measured cumulatively over sequential Plots through the Development Period.
5. Of the Units to be delivered as Affordable Residential Units referred to at paragraph 4 above, 75% must be Target Rent Units (provided that the overall requirement of 50% of Units to be delivered as Affordable Residential Units must be achieved) measured cumulatively over sequential plots through the Development Period but excluding the Affordable Residential Units delivered on Plot 18.
6. The tenure mix across Residential Unit types and sizes and the distribution of tenures across the Development Area will be based on the principles for the First Development Site save that (for this purpose) Private Residential Units for sale or for rent shall be treated as a single tenure.
7. The development of the entire Development Area is to be completed by the date twenty years from the date of this Agreement (subject to agreed extensions as permitted by the Change Procedure in this Agreement).
8. Any Development Works for decommissioning, disconnection and diversion of the District Heating System are to be carried out so as to ensure continuity of hot water and heating supply to any buildings (including any dwellings and the New School Aylesbury) served by the existing District Heating System is maintained until replacement supplies are fully activated and commissioned. The Developer is to provide as part of its Development Works a new supply to the New School Aylesbury to a specification approved by the Council.

17. For the twenty year period from the first Disposal or (if earlier) until the last existing tenants and resident leaseholders at the Aylesbury Estate have been rehoused, the Council will have 100% nomination rights to all Affordable Residential Units including re-lettings; after which the standard Southwark Housing Association Group nominations agreement as updated from time to time will apply.
18. The Developer will maintain a recognised management accreditation demonstrating customer service excellence or similar (as set out in Section 10 of the Business Plan) that demonstrates a track record in management and resident satisfaction.
19. The Council and the Developer agree the ring fencing of income from ground rents received from any Units for the maintenance, renewal and management of all Non-Adopted Shared Space at the Development Area, with any surplus not required for such maintenance, renewal and management payable to the Council.
20. The Developer will provide a named Project Director, Design Director and MCI Manager throughout the whole of the Development Period
21. The Developer will provide the following employment and training opportunities.
 - 21.1 18 unemployed Southwark residents supported into employment and sustained in work for 6 months, via training or job brokerage per 10,000m2 GIA
 - 21.2 6 Apprenticeships or equivalent Traineeships at level 2 or above per 10,000m2 Internal Area (as defined by sub-section (a) of the defined term)
 - 21.3 10 Southwark residents receiving pre or post employment training per 10,000m2 Internal Area as defined by sub-section (a) of the defined term)

SCHEDULE 4

Financial provisions

In this Agreement the following words or phrases shall have the following meanings:

"Additional Bulk Sale"	each and every Bulk Sale which would cause the number of Private Residential Units comprised in Bulk Sales within the First Development Site or any Subsequent Plot to exceed 15% of the total number of Private Residential Units within the relevant Plot (or such other percentage as may be agreed by the Steering Group from time to time)
"Additional Bulk Sale Sum"	<p>for any Plot the higher of:</p> <p>a) the aggregate of all Capital Receipts received or receivable in relation to any Private Residential Units Disposed of at the Plot by way of Additional Bulk Sales; and</p> <p>b) the Market Value of such Private Residential Units comprised in Additional Bulk Sales</p>
"Additional Overage"	<p>the payment to the Council of a sum equivalent to:</p> <p>$X\% \times (A-B)$ where:</p> <p>A= the Market Value of the relevant Unit or Units without a restriction on use so that it can only be used for Private Rental Use</p> <p>B= the Market Value of the relevant Unit or Units with a restriction on use so that it can only be used for Private Rental Use</p> <p>$X = 100 - (10 \times Y)$</p> <p>where Y is the number of full years between a) the date of the first use for Private Rental of the relevant Unit or Units subject to the Private Rental Change of Use</p>

	and b) the date the Private Rental Change of Use occurs for such Unit or Units
"Additional Overage Payment Date"	the date 20 Working Days after a Private Rental Change of Use
"Agreed Percentage"	50%
"Annual Information"	the information to be provided by the Developer to the Council annually pursuant to paragraph 1.4.2 of Part 1 of this Schedule
"Base Value"	<p>Means:</p> <p>(a) for each Private Residential Unit (excluding any Private Rental Units) a sum calculated as follows:</p> $(A \times B) + (£10,000 \times C)$ <p>Where:</p> <p>A = four hundred and seventy one pounds (£471)</p> <p>B= the square feet in Internal Area for the relevant Private Residential Unit within the First Development Site (excluding any Private Rental Units)</p> <p>C= the number of car parking spaces allocated to that Private Residential Unit within the First Development Site; and</p> <p>(b) for each Private Rental Unit a sum calculated as follows:</p> $(D \times E) + (£10,000 \times F)$ <p>Where:</p> <p>D = three hundred and eighty-six pounds (£386)</p> <p>E = the square feet in Internal Area for the relevant Private Rental Unit within the</p>

	First Development Site
	F = the number of car parking spaces allocated to that Private Rental Units within the First Development Site
"Bulk Sale"	any disposition by way of sale, letting, underletting, assignment or otherwise to a person, company or other body (or any Associated Company or Connected Person of such person, company or body) of more than five Private Residential Units per Plot (and references to "Bulk Sales" shall be construed accordingly)
"Buy-In Price"	means the figure shown on the face of the transfer to the Developer, Developer's Principal Agent, or any Associated Company of the Developer of any PX Property
"Community Contribution"	one million two hundred and fifty thousand pounds (£1,250,000)
"Cost of Extras"	the additional cost to the Developer, Developer's Principal Agent or Nominee and/or any Associated Company as the case may be of providing Extras to a purchaser in relation to the relevant sale over and above the cost of the items that would usually be provided as set out in the Standard Specification or if such item is not usually provided then the actual cost to the Developer, Developer's Principal Agent or nominee of providing that item
"Council's Sales Overage"	the sum or sums payable to the Council calculated in accordance with paragraph 1.4.4.4 of Part 1 of this Schedule
"Council's Development Overage"	the sum or sums payable to the Council calculated in accordance with paragraph 2.4.1 of Part 1 of this Schedule

"End Date"

4 years from the grant of the Plot Lease or the first Sub-Plot Lease for the Relevant Plot

"Extras"

any item or items reasonably and properly provided by the Developer, Developer's Principal Agent or Nominee and/or any Associated Company to any purchaser of a Private Residential Unit taking into account the location of the Private Residential Unit and marketing conditions which the Developer, Developer's Principal Agent or

	<p>Nominee and/or any Associated Company would acting reasonably not usually provide to a purchaser of a Private Residential Unit of similar price and quality to the relevant Private Residential Unit (including (but not limited to) curtains, carpets, fitted white goods, washing machines, washer dryers, dishwashers, tumble dryers, granite worktops, wardrobes, fridge/freezers, marble worktops, brass/chrome electric light/socket/switches fittings over white plastic, show home furniture and light fittings, furniture packages, turf to rear gardens, extra patio slabs, fire places and/or fires (gas or electric)) in each case provided by the Developer, Developer's Principal Agent or Nominee and/or any Associated Company at its cost but free of charge to a purchaser as part of a sale over and above those set out in the Standard Specification</p>
"First Fixed Payment"	the sum of £1,186,861 (one million one hundred and eighty six thousand eight hundred and sixty one pounds
"First Fixed Payment Date"	the Completion Date of the Sub-Plot Lease for Sub-Plot 6 (as identified and defined in the Plot Plan) of the First Development Site
"Fixed Payments"	the First Fixed Payment, Second Fixed Payment and Third Fixed Payment
"Market Value"	<p>for any Unit or Units:</p> <ul style="list-style-type: none"> (a) for a Private Residential Unit or Units, the Private Residential Unit Market Value for such Unit or Units; (a) for any Affordable Residential Unit or Units, the Affordable Residential Unit Market Value for such Unit or Units; (b) for any Private Rental Unit, the

"Market Rent"

The definition of "Market Rent" as adopted by the Royal Institution of Chartered Surveyors in the current Valuation Standards from time to time

"Overage Calculation Date"

the Sales Overage Calculation Date or Development Overage Calculation Date (as the context requires)

"Plot 18 Infrastructure Fee"

nine million pounds (£9,000,000) payable
in accordance with paragraph 1.3.1 of this
Schedule

“Pre-letting”

means an agreement for lease of a Unit is in place at the behest of the Council and on terms approved by the Developer

"Premium"

the premium payable in relation to any Sub-Plot or Plot being:

(a) for the First Development Site, the Fixed Payments payable in accordance with paragraph 1.2 of Part 1 of this Schedule; and

(b) for any Plot not within the First Development Site, the Premium for such Plot calculated and payable in accordance with paragraph 2.2 of Part 1 of this Schedule

"Private Rental"

The first letting of the Units on short term tenancies of no greater than ten years on the open market for private residential purposes excluding any Affordable

	Residential Units.
"Private Rental Capital Ratio"	a multiplier of 20
"Private Rental Capitalised Sum"	for any Private Rental Units at the Relevant Plot, a sum calculated on the following basis: $CR \times RI \times 75\%$ <p>Where CR= the Private Rental Capital Ratio</p> <p>And RI = the Private Rental Income for the relevant Private Rental Units</p> <p>Provided always that the sum calculated as above shall be capped at 80% of the sum which would be calculated if the individual Private Rental Units comprised within the Private Rental Units being valued were valued in accordance with the individual Private Residential Unit Market Values for such Units and further provided that any Capital Receipt received in relation to car parking spaces allocated to such Unit is added to such sum</p>
"Private Rental Change of Use"	for the period of ten years from the later of a) the Council being notified of a Private Rental Unit and b) such Unit being used for Private Rental, any change of use of such Unit from Private Rental Use to another use (whether to Private Residential or otherwise)
"Private Rental Deed"	a deed in the form appended at Appendix 6 with such reasonable amendments proposed by the Developer and approved by the Council (such approval not to be unreasonably withheld or delayed)
"Private Rental Income"	the higher of: (a) the aggregate (excluding VAT) of the annual principal rents payable or which will be payable

under any leases of any Private Rental Unit (including any derivative leases), or any agreement for lease relating to the Private Rental Units after the expiry of any rent-free period or period of concessionary rent under the leases or any agreement for lease; or

- (b) the "Market Rent" for the Private Rental Units

"Private Rental Unit Market Value"

in relation to a Private Rental Unit the definition given to it in the Red Book assuming that:

- (a) a single Private Rental Unit is available on a lease term of 250 years commencing on the date which is one month after the relevant Date of Practical Completion (which date shall be estimated, if necessary, whenever Private Rental Unit Market Value is being calculated);
- (b) Practical Completion of the relevant Private Rental Unit has occurred and it is fitted out to the standard expected of the market in this location;
- (c) the tenant will have the benefit of all rights and easements required for the beneficial occupation of the Private Rental Unit

"Private Rental Units"

for any Relevant Plot, any Units used or intended to be used for Private Rental purposes, and references to "Private Rental Unit" are to be construed accordingly

"PX Costs"

a sum to reflect the actual proper costs of the Developer or Developer's Principal Agent or any Associated Company in

	<p>acquiring and reselling a PX Property which is calculated to be the differential between the Resale Price and the Buy In Price, and in addition stamp duty land tax on the Buy In Price, and proper solicitors' fees, valuation fees, insurance and outgoings payable on the PX Property until sold including costs of financing purchase of PX Property at the same rate as financing cost for the Development Works (as set out at paragraph 9.2 of Schedule 5) until Resale and the difference (if less) between the Resale Price and Buy In Price</p>
"PX Property"	<p>a residential unit not within the Development Area part exchanged by the Developer, Developer's Principal Agent, Nominee or any Associated Company with the purchaser of a Residential Unit in consideration of entering into the Disposal of a Private Residential Unit</p>
"Reporting Date"	<p>31 January or such other date as agreed by the Steering Group from time to time</p>
"Reporting Periods"	<p>the period from the date of completion of this Agreement until the following 31 December and then each following period of 1 January to 31 December, and references to "Reporting Period" has a corresponding meaning</p>
"Resale"	<p>the figure included as the consideration payable in the transfer of a PX Property to the Developer, the Developer's Principal Agent or to any Associated Company</p>
"Resale Price"	<p>the figure shown on the face of the transfer from the Developer, Developer's Principal Agent, or any Associated Company of any of the aforementioned of any PX Property</p>
"Sales Overage"	<p>the payment of Overage pursuant to paragraph 1.4.1 of this Schedule</p>

"Sales Overage Calculation Date"	the date 20 Working Days after the expiry of the relevant Sales Overage Period
"Sales Overage Payment Dates"	the dates determined in accordance with paragraph 1.4.5 of this Schedule
"Sales Overage Period"	means: <ol style="list-style-type: none"> (a) the period from the date on which the Developer commences construction of the first unit on the First Development Site until the earliest of i) the Disposal of all Private Residential Units at Sub-Plots 1, 2 and 5 (as defined in the Plot Plan); and ii) 31 January 2022 ("the First Sales Overage Period"); and (b) the period from the expiry of the First Sales Overage Period until the earliest of i) the date on which the Disposal of all of the Private Residential Units at the First Development Site has occurred; and ii) 31 December 2024 ("the Second Sales Overage Period").
"Second Fixed Payment"	the sum of £2,351,897 (two million three hundred and fifty one thousand eight hundred and ninety seven pounds
"Second Fixed Payment Date"	the Completion Date for Sub-Plot 3 of the First Development Site (as identified and defined in the Plot Plan)
"Standard Specification"	the detailed sale specification produced by or on behalf of the Developer from time to time for the Private Residential Units subject to such amendments as the Developer shall reasonably require taking into account prevailing market conditions
"Third Fixed Payment"	the sum of £12,761,242 (twelve million seven hundred and sixty one thousand two

"Third Fixed Payment Date"

"Transport Improvements Fee"

"Unforeseen Costs"

iii) any anticipated costs allowed for in the Financial Appraisal used for the satisfaction of the Plot Final Viability Condition.

"Valuation Code"

the latest edition of the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards current at the relevant Overage Calculation Date

PART 1- PAYMENT PROVISIONS

1. First Development Site - Deposit, Fixed Payments Sales Overage and other Payments

The provisions of paragraph 1 of Schedule 4 apply to the First Development Site only.

1.1 Payment of Deposit

1.1.1 Subject to paragraph 1.1.2 the Developer is to pay the Deposit on a non-refundable basis on the date of this Agreement.

1.1.2 The Deposit is only to be returnable to the Developer by the Council where the Unconditional Date for the First Development Site does not arise solely due to the Council not satisfying the Vacant Possession Condition for the First Development Site by the Longstop Date for the Unconditional Date for the First Development Site.

1.1.3 The Council is entitled to retain all interest accrued on the Deposit where it returns the Deposit to the Developer in accordance with paragraph 1.1.2.

1.2 Fixed Payments

1.2.1 Subject to any adjustment required pursuant to paragraph 1.2.2 or paragraph 4 of Part 1 of this Schedule, the Premium for the First Development Site is to be paid by the Developer to the Council by way of:

1.2.1.1 payment of the First Fixed Payment on the First Fixed Payment Date;

1.2.1.2 payment of the Second Fixed Payment on the Second Fixed Payment Date; and

1.2.1.3 payment of the Third Fixed Payment on the Third Fixed Payment Date.

1.2.2 The parties agree that the agreed contract price of the Demolition Contract (as defined in Schedule 10) for the First Development Site is to be set off in whole or in part against the Plot 18 Infrastructure Fee

and/or the Fixed Payments and is to be deducted from such payments as they fall due, along with any Demolition Financing Costs properly accruing in relation to any part of the Demolition Costs from the date the Demolition Costs are incurred until the date the relevant part of the Demolition Costs is offset and deducted in accordance with this paragraph.

1.3 First Development Site- Additional Payments

1.3.1 Plot 18 Infrastructure Fee

Subject to paragraph 1.2.2 the Developer is to pay to the Council the Plot 18 Infrastructure Fee in the following instalments:

1.3.1.1 four and a half million pounds (£4,500,000) on commencement of a Material Operation (here for the avoidance of doubt excluding any works relating solely to Above Ground Demolition) for the First Development Site; and

1.3.1.2 four and a half million pounds (£4,500,000) to be paid on the first Working Day arising on or after the date 30 months after the date of the commencement of a Material Operation referred to at paragraph 1.3.1.1.

1.3.2 Other Payments

The Developer is to pay the Community Contribution and the Council's Management Fee in accordance with paragraph 3 of Part 1 of this Schedule.

1.4 First Development Site- Sales Overage

1.4.1 Calculation of Sales Overage

The Council's Sales Overage is to be paid in relation to all Sub-Plots at the First Development Site on the Sales Overage Payment Dates.

1.4.2 Annual Sales Reporting

1.4.2.1 The Developer shall provide to the Council by each Reporting Date in respect of each Unit Disposed of in the preceding Reporting Period and for any Private Rental Unit at each Sub-Plot of the First Development Site details of
a) the Development Receipts (including all Capital Receipts) and b) any Private Rental Capitalised Sums relating to any Private Rental Units at each Sub-Plot at the

First Development Site, together with such additional information as the Council may reasonably require to verify the Development Receipts, Capital Receipts, Private Rental Income and any Private Rental Capitalised Sums and how they were calculated (the "Annual Information") and if required by the Council may require the Developer to provide certified copies of the sale contracts relating to Units (and any other reasonable evidence the Council may require) to evidence the breakdown provided by the Developer.

1.4.2.2 The Council shall notify the Developer in writing within 20 Working Days of receipt of the Annual Information whether or not such Annual Information is approved and (if it is not approved) the Council will supply the Developer with full written reasons and supporting evidence as to why approval is not given.

1.4.2.3 If the Council's approval is not given the Parties will each use reasonable endeavours to agree the Annual Information as soon as reasonably practicable in default of which after 20 Working Days of the Council confirming it is not approving the Annual Information pursuant to paragraph 1.4.2.2 above the elements of the Annual Information still in dispute may be referred by either Party at any time thereafter (but prior to agreement being reached between the parties) for determination by a Specialist pursuant to clause 14.

1.4.2.4 Once the Annual Information for a Reporting Period has been agreed or deemed agreed between the parties or determined by the Specialist it shall not be capable of variation save in the case of manifest error.

1.4.3 Calculation Dates

1.4.3.1 The Developer will make its calculation of the Sales Overage (if any) and the Council's Sales Overage and provide this to the Council by each relevant Sales Overage Calculation Date.

1.4.3.2 On any Sales Overage Calculation Date the Developer will deliver to the Council a statement providing details as at the Sales Overage Calculation Date of:

- (a) the total of all Development Receipts received or deemed to have been received for the purposes of this Schedule by or on behalf of the Developer in respect of the Relevant Plot;
- (b) the prices and number of Bulk Sales and Private Rental Units and the Development Receipts for each Bulk Sale and the Development Receipts and/or the Private Rental Income received for Private Rental Units;
- (c) the number of Units allocated to be Private Rental Units at the Relevant Plot and confirmation as to whether have been or are intended to be Disposed or are to be held by the Developer and whether they are let to Occupational Tenants and the calculation of the Private Rental Capitalised Sum for such Units;
- (d) the Market Value in respect of any Units at the Relevant Plot which have not been the subject of a Disposal by the Overage Calculation Date in respect of the Relevant Plot;
- (e) the Market Value in respect of any Units at the Relevant Plot which have been subject to an Additional Bulk Sale;
- (f) the Developer's calculation of the Internal Area of the Relevant Plot;
- (g) the amount of Capital Receipts achieved for a Relevant Plot and any Sales Incentives offered and PX Costs incurred by the Developer in respect of the Relevant Plot (and where PX Costs incurred all other supporting evidence including details of any PX Property and Resale Prices); and
- (h) the Developer's calculation of the Sales Overage and the Council's Sales Overage payable to the Council in respect of the Relevant Plot.

together with all supporting information the Council may reasonably require in order to verify the information provided pursuant to clauses 1.4.3.2 (a) to (g)

- 1.4.3.3 Once the relevant Sales Overage and/or Council's Sales Overage has been agreed between the parties or determined by the Specialist they shall not be capable of variation save in the case of manifest error.

1.4.4 Calculation of Sales Overage and Council's Sales Overage

1.4.4.1 Subject to paragraphs 1.4.1. to 1.4.3 inclusive the Sales Overage for the First Development Site shall be calculated in accordance with the following formula:

1.4.4.2 $X = ((A + B + C) - D \cdot E)$

1.4.4.3 where:

A = the aggregate of the Capital Receipts for all Private Residential Units which have been Disposed of within the First Development Site during the relevant Sales Overage Period ("the Relevant Period") excluding Capital Receipts relating to any Additional Bulk Sales and any Private Rental Units;

B = the aggregate of the Private Rental Capitalised Sum for a) all Private Residential Units Disposed of as Private Rental Units at the First Development Site during the Relevant Period and b) for any other Units otherwise determined to be Private Rental Units pursuant to paragraph 5.3 of this Schedule where the Council's Sales Overage is to be paid at the expiry of the Relevant Period in accordance with paragraph 5.3;

C = for the First Sales Overage Period the Additional Bulk Sales Sum; for the Second Sales Overage Period, the aggregate of the Additional Bulk Sales Sum and the Market Value of any Private Residential Units (excluding any Private Rental Units) not subject to a Disposal at the end of the Second Sales Overage Period;

D = the aggregate of the Base Values for all Private Residential Units and Private Rental Units which a) have been Disposed of within the First Development Site during the Relevant Period or b) have not been Disposed but have otherwise triggered the requirement to pay the Council's Sales Overage for the relevant Units at the expiry of the Relevant Period in accordance with the provisions of this Schedule;

E = the aggregate of Sales Incentives and PX Costs (which Sales Incentives and PX Costs (net of any recoverable VAT) shall be capped at 5 per cent of Capital Receipts) and if a negative number due to PX Costs generating a net

receipt then this shall be treated as a negative number and therefore an addition in the calculation at paragraph 1.4.4.2;

X = the Sales Overage in pounds sterling payable in respect of the relevant Sales Overage Period and which, if less than zero, shall be deemed to be zero.

1.4.4.4 The Council's Sales Overage is to be the Agreed Percentage of the Sales Overage.

1.4.5 Payment of the Council's Sales Overage

1.4.5.1 The Developer shall pay the Council's Sales Overage to the Council by the relevant Sales Overage Payment Date which shall be the later of:

- (a) the date 20 Working Days after the relevant Sales Overage Calculation Date; or
- (b) if the amount due has not been agreed by the date 20 Working Days after the relevant Sales Overage Calculation Date the date 20 Working Days after the amount of the Sales Overage payable is agreed between the Council and the Developer or determined by the Specialist.

1.4.6 The Developer will Dispose (or procure the Disposal of) all Private Residential Units at arm's length and use reasonable endeavours to maximise the Capital Receipts in accordance with the MCI Strategy for the Private Residential Units and for any Private Rental Units to maximise the Private Rental Income and Private Rental Capitalised Sum in relation to such Units provided that undertaking sales in accordance with the MCI Strategy, the Objective and the Business Plan will not be a breach of this clause.

1.4.7 The worked examples at Part 2 of this Schedule are provided to illustrate the workings of the calculation of the Sales Overage, Council's Sales Overage and Additional Overage provided that in the event of any conflict between the worked examples and the provisions of this Part 1 this Part 1 shall prevail.

1.4.8 All payments of Council's Sales Overage and Additional Overage are to be exclusive of any VAT.

1.4.9 Where for any Unit within the First Development Site there is a Private Rental Change of Use the Developer is to procure the payment of the

Additional Overage for the Units subject to the Private Rental Change of Use to the Council on the Additional Overage Payment Date.

1.4.10 If the calculation of Additional Overage results in a negative sum, the Additional Overage payable is deemed to be zero.

1.4.11 Disposals to the Developer Partner an Associated Company or Connected Person or Exempt Disposals are not to be treated as "Disposals" for the purpose of this paragraph 1.

1.5 Interest on late payments of Sales Overage

Any payment of Council's Sales Overage to be made by the Developer that is not made within the time limits set out in this Agreement is to bear interest at the Contract Rate both after as well as before judgment, calculated from and including the relevant Overage Payment Date to and including the actual date of payment.

2. Subsequent Plots after the First Development Site

2.1 The provisions of Part 2 of Schedule 4 apply to all Plots other than the First Development Site.

2.2 Premiums

2.2.1 For any Plot not within the First Development Site the Premium is (subject to any adjustment pursuant to paragraph 4) to be the Positive Land Price as defined in Schedule 6 (if any) for the Plot as agreed or determined by the parties when the Plot Final Viability Condition for the Plot is satisfied in accordance with paragraph 3.3 of Schedule 6.

2.2.2 The Premium for a Plot is to be paid on completion of the Plot Lease for the Plot. Where however there are Sub-Plots within a Plot, the Premium is to be apportioned and paid on the following basis:

$$X = \frac{Y}{Z} \times P$$

Where

P: the total Premium due in respect of the Relevant Plot;

X: payment to be paid on the Completion Date of the relevant Sub-Plot Lease;

Y: the number of Units to be comprised within the Sub-Plot; and

Z: the number of Units to be comprised within the Plot.

to the intent that the Premiums are calculated pro-rata the number of Units in each Sub-Plot on completion of the relevant Sub-Plot Lease.

2.3 Additional Payments

2.3.1 Transport Improvements Fee

2.3.1.1 For the Subsequent Plots the Developer is to pay the Transport Improvements Fee to the Council on the Completion Date for the Building Lease for each Plot.

2.3.1.2 The Transport Improvements Fee is to be calculated by reference to the following formula:

$P = \text{one thousand five hundred pounds (£1,500)} \times (A / B)$
x the number of Units to be comprised within at the Relevant Plot

Where:

A = the Index figure last published before the Completion Date of the Building Lease for the Relevant Plot.

B = the Index figure last published before the date of this Agreement.

2.3.1.3 If the reference base used to compile the Index changes after the date of this Agreement, the Index published for the month in which the relevant Building Lease is completed is to be adjusted to give the figure which would have been shown as the Index if the reference base current at the date of this Agreement had been retained.

2.3.1.4 If the method of calculating the Index changes substantially after the date of this Agreement, the Index published for the month in which the relevant Building Lease is due to be completed is to be adjusted to give the figure which would have been shown by the Index if the method for calculating the Index last published before the date of this Agreement had not been changed.

2.3.1.5 If the Index ceases to be published, the Council and the Developer are to use all reasonable endeavours to agree an alternative index reflecting changes in retail prices to

use for the purposes of calculating the Transport Improvements Fee.

2.3.1.6 If the Transport Improvements Fee agreed or determined under this paragraph is less than one thousand five hundred pounds (£1,500) multiplied by the number of Units at the Relevant Plot, the Transport Improvements Fee is to be one thousand five hundred pounds (£1,500) multiplied by the number of Units at the Relevant Plot.

2.3.1.7 Where financial contributions are required to be payable by the Developer for transport improvements pursuant to a Planning Agreement, the Transport Improvements Fee payable in accordance with this Schedule is to be adjusted so there is no duplicated payment.

2.3.1.8 Any dispute as to whether there is a duplicated payment arising pursuant to paragraph 2.3.17 is to be referred to a Specialist for resolution in accordance with clause 14.

2.3.2 Other Payments

The Developer is to pay the Community Contribution and the Council's Management Fee in accordance with paragraph 3 of Part 1 of this Schedule.

2.4 Calculation of Development Overage for Subsequent Plots

The Council's Development Overage is to be paid in relation to all Plots and Sub-Plots except any Plots and Sub-Plots within the First Development Site.

2.4.1 The Council's Development Overage is to be the Agreed Percentage of the total Development Overage payable for any Relevant Plot and the Development Overage is to be calculated in accordance with the following formula:

$$DO = (DR + MV + ABS + PR) - (DC + DPR)$$

where:

DO = Development Overage

DC = the total amount of the Development Costs, Sales Incentives and PX Costs (which Sales Incentives and PX Costs shall be subject to a cap of 5% per cent of Capital Receipts) for the Relevant Plot debited to the Development Account for that Plot but excluding the Developer's Priority Return) and if a negative number due to PX Costs generating a net receipt then this shall

be treated as a negative number and therefore an addition to the calculation at paragraph 2.4.1

- DPR = the Developer's Priority Return for that Plot
- DR - the total amount of the Development Receipts for the Relevant Plot credited to the Development Account for that Plot excluding any Development Receipts relating to Additional Bulk Sales or Private Rental Units
- PR - the total amount of any Private Rental Capitalised Sum for any Private Rental Units at the Relevant Plot (as identified pursuant to paragraph 5 of this Schedule)
- MV = the Market Value of Units (excluding Private Rental Units) at that Relevant Plot which have not been the subject of a Disposal at the Development Overage Calculation Date
- ABS = the Additional Bulk Sale Sum for the Relevant Plot.

2.4.2 On any Development Overage Calculation Date the Developer will deliver to the Council a statement providing details as at the Development Overage Calculation Date of:

- 2.4.2.1 the total of all Development Costs incurred by or on behalf of the Developer in respect of the Relevant Plot;
- 2.4.2.2 the total of all Development Receipts received or deemed to have been received for the purposes of this Schedule by or on behalf of the Developer in respect of the Relevant Plot and any Private Rental Capitalised Sums;
- 2.4.2.3 the prices and number of Private Rental Units (and confirmation as to whether they have been or are intended to be Disposed or are to be held by the Developer and whether they are let to Occupational Tenants) and the Development Receipts for each Bulk Sale and the Development Receipts and/or any Private Rental Income for any Private Rental Units;
- 2.4.2.4 the Market Value in respect of any parts of the Relevant Plot which have not been the subject of a Disposal (excluding Private Rental Units) by the Overage Calculation Date in respect of the Relevant Plot;
- 2.4.2.5 the Developer's Priority Return in respect of the Relevant Plot;

- 2.4.2.6 the Developer's calculation of the Internal Area of the Relevant Plot;
- 2.4.2.7 the Development Overage and the Council's Development Overage payable to the Council in respect of the Relevant Plot; and
- 2.4.2.8 the amount of Capital Receipts achieved for a Relevant Plot and any Sales Incentives offered and PX Costs incurred by the Developer in respect of the Relevant Plot (and where PX Costs incurred all other supporting evidence including details of any PX Property and Resale Prices);

together with all supporting information the Council may reasonably require in order to verify the information provided pursuant to paragraphs 2.4.2.1 to 2.4.2.7.

2.4.3 When calculating the amount of any Development Costs at the Development Overage Calculation Date:

- 2.4.3.1 any expenditure which accrues over or relates to a period will if apportionment is necessary be treated as accruing from day to day throughout the period to which it relates and will be apportioned accordingly; and
- 2.4.3.2 for any expenditure that cannot be calculated on an apportionment basis by the Development Overage Calculation Date the parties will as far as practicable make a fair and reasonable estimate of the likely amount of such payments and failing agreement the matter will be determined by the Specialist.

2.4.4 For the avoidance of doubt:

- 2.4.4.1 if the Development Overage is a negative amount, no sum shall be payable by the Council; and
- 2.4.4.2 the actual Development Costs and actual Development Receipts used in the calculation of Development Overage payable in respect of one Plot shall not be used in the calculation of the Development Overage payable in respect of any other Plot.

2.4.5 The worked examples at Part 2 of this Schedule are provided to illustrate the workings of the calculation of the Development Overage

provided that in the event of any conflict between the worked examples and the provisions of this paragraph 2.4 this paragraph shall prevail.

- 2.4.6 The Developer (or any Connected Person or Associated Company) will use reasonable endeavours to maximise the Development Receipts and the Development Overage payable to the Council. The Developer (or any Connected Person or Associated Company) shall not make a Disposal otherwise than at arm's length and (save for a Exempt Disposal) at the best price reasonably obtainable and shall not sell let or otherwise dispose of Units and/ or the Development Area save by way of a Disposal.
- 2.4.7 If the Developer makes a Disposal then within 5 Working Days of such Disposal the Developer will provide to the Council complete copies of all documents effecting the relevant Disposal and a summary of the financial terms of such Disposal (including a statement detailing the amount of the ascertainable Development Receipts and whether the Disposal is a Bulk Sale, Additional Bulk Sale and/or a Disposal of Private Rental Units).
- 2.4.8 If by the Development Overage Calculation Date for the Relevant Plot the whole of the Relevant Plot has not been Disposed of or Units comprise Bulk Sales or Private Rental Units the Developer and the Council shall use all reasonable endeavours to agree within 20 Working Days of such date the Market Value of such part or parts of the Relevant Plot which have not been Disposed of or comprise Bulk Sales and the Market Rent of any Private Rental Units and the provisions of paragraphs 2.4.9 and 2.4.10 will apply.
- 2.4.9 The Market Value as agreed or determined under paragraph 2.4.8 will be deemed to be a Development Receipt received on the Development Overage Calculation Date.
- 2.4.10 For the avoidance of doubt any actual sums paid or received relating to a relevant part of the Relevant Plot which has had a Market Value applied to it under paragraph 2.4.8 and which would otherwise be counted as a Development Cost or a Development Receipt (as the case may be) shall not be counted as a Development Cost or a Development Receipt (as the case may be) after the relevant part or parts are the subject of a deemed Development Receipt under paragraph 2.4.9.

- 2.4.11 The Developer will pay the Council's Development Overage for the Relevant Plot on the Development Overage Payment Date for the Relevant Plot.
- 2.4.12 The Developer shall before taking any part of the Development Receipts (other than the "Developer's Priority Return") pay the Council's Development Overage to the Council and shall procure as part of any direct covenant required to be delivered to the Council under this Agreement an obligation from the person giving that covenant in favour of the Council to enforce this obligation on the Council's behalf.
- 2.4.13 The Development Overage and any Additional Overage is to be exclusive of VAT.
- 2.4.14 Disposals to an Associated Company or Connected Person or wholly owned subsidiary of the Developer or to a Developer Partner or Exempt Disposals are not to be treated as "Disposals" for the purpose of this paragraph 2 and the provisions of paragraph 2.4.8 will then apply.
- 2.4.15 Where for any Unit within a Subsequent Plot there is a Private Rental Change of Use the Developer is to procure the payment of the Additional Overage for the Unit or Units subject to the Private Rental Change of Use to the Council on the Additional Overage Payment Date save where a person to whom the Private Rental Units have been the subject of a Disposal have provided a Private Rental Deed to the Council.
- 2.4.16 If the calculation of Additional Overage results in a negative sum, the Additional Overage payable is deemed to be zero.

2.5 Interest on late payments of Development Overage

Any payment of Council's Development Overage to be made by the Developer that is not made within the time limits set out in this Agreement is to bear interest at the Contract Rate both after as well as before judgment, calculated from and including the relevant Overage Payment Date to and including the actual date of payment.

3. General Financial Payments

3.1 The sums payable pursuant to this paragraph 3 are payable in relation to the First Development Site and the Subsequent Plots.

3.1.1 Council's Management Fee

3.1.1.1 From the Unconditional Date for the first Plot of Phase 2 until the expiry of the remaining Development Period the Developer will (subject to receipt of a VAT invoice from the Council) on the date of the anniversary of this Agreement in any year (or if VAT is due thereon ten Working Days after receipt of the relevant valid VAT invoice) pay, in addition to any other payment due under this Agreement, a contribution of two hundred and fifty thousand pounds (£250,000) per annum (payable on each anniversary of the Agreement) to the Council as a contribution to the Council's management, monitoring and administrative costs ("the Management Fee").

3.1.1.2 Where the Agreement is terminated by the Council the Developer is not to be obliged to pay the remaining Council's Management Fee for the unexpired part of the Development Period save for any payments that fall due prior to the date of termination but have not been paid (but the Council is to be permitted to retain all payments made).

3.1.2 Community Contribution

3.1.2.1 For a period of five years from 1 April 2015 to 31 March 2020 the Developer is to pay the Community Contribution to the Council, or at the Council's election to the Creation Trust or such other nominee as the Council may require) by equal annual instalments of two hundred and fifty thousand pounds (£250,000) per annum.

3.1.2.2 The first instalment of the Community Contribution is to be paid on 1 April 2015 and each subsequent instalment is to be paid on 1 April for each relevant year.

4. Public Sector Funding

4.1 In the event that Public Sector Funding is secured on any Plot the Developer is to notify the Council and provide full details of such Public Sector Funding and on receipt of any such Public Sector Funding by the Developer (or any Group Company or Connected Person) the Fixed Payments and/ or Premiums (as the context requires) are to be adjusted so as to be proportionally increased on a pro-rata basis over any Fixed Payments or Premiums not yet paid for the Plot (subject to paragraph 4.5 below) so an equivalent sum to the Public Sector Funding less Unforeseen Costs is paid in addition to the agreed Fixed Payment/ Premium (such sum being deemed to be nil where it is negative) on the later of

the date for such payment or 10 Working Days after such additional amount has been agreed or determined pursuant to this Agreement and the relevant Public Sector Funding having been received by the Developer (or any Associated Company or Connected Person) and is legally able to be spent by the Developer pursuant to the terms of the Public Sector Funding.

- 4.2 Where paragraph 4.1 applies, the Developer is to notify the Council as soon as any Unforeseen Costs can be identified (and in any event prior to the payment date for the relevant Fixed Payment or Premium) with such evidence as the Council may reasonably require so as to be able to determine whether it agrees with the Developer's calculation of the Unforeseen Costs.
- 4.3 The Council is to confirm within 40 Working Days whether or not it agrees with the Developer's calculation of the Unforeseen Costs and/or the Public Sector Funding, or whether it requires additional information (and where further additional information is reasonably required the Developer is to provide such information as soon as reasonably practicable). For the avoidance of doubt, any delay due to determination of Unforeseen Costs and/or Public Sector Funding is not to delay the payment of the relevant Fixed Payment or Premium, but a balancing payment is to be made by the Developer as required within 20 Working Days of determination or agreement of the adjustment to the relevant Fixed Payment or Premium.
- 4.4 A worked example showing Public Sector Funding and Unforeseen Costs is included at Part 3 of this Schedule provided that in the event of any conflict between the worked examples and the provisions of this paragraph 4, this paragraph shall prevail.
- 4.5 Where Public Sector funding is secured on a Plot and there is no further Premium or Fixed Payment to be made, the sum payable to the Council pursuant to this Paragraph 4 is to be paid to the Council within 20 Working Days of receipt of the Public Sector Funding.
- 4.6 Any disputes that may arise pursuant to this clause may be referred by either party to a Specialist appointed in accordance with clause 14.
5. Private Rental Units
- 5.1 On any Plot any Disposals or the use of Units in each case as Private Rental Units is not permitted without the approval of the Steering Group (acting reasonably).
- 5.2 For the purposes of the calculation and payment of any Sales Overage and/or Development Overage, a Unit is only to be treated as a Private Rental Unit from the date of approval by the Steering Group of the relevant Unit as being a Private Rental Unit in accordance with paragraph 5.1 above.

- 5.3 Where a Unit in the First Development Site is classed as a Private Rental Unit pursuant to the approval of the Steering Group in accordance with paragraph 5.2 above, it will be valued for the purposes of Overage on the Sales Overage Calculation Date first arising after the First Sales Overage Period where it has been either subject to a Disposal or has generated any Private Rental Income in the First Sales Overage Period; otherwise it will be valued for the purposes of Overage on the Overage Calculation Date arising after the Second Sales Overage Period (and for the avoidance of doubt where not used or Disposed of by the end of the Second Sales Overage Period, any Private Rental Units are to be assessed for the purposes of calculating Overage and the Private Rental Capitalised Sum for such Units on the basis of the Market Rent of such Units) .
- 5.4 Where a Unit for a Subsequent Plot is classed as a Private Rental Unit, it will be valued for the purposes of Overage on the Development Overage Calculation Date for the Subsequent Plot.
- 5.5 On the date of the Disposal of any Private Rental Unit (or if earlier the date of use of such Unit as a Private Rental Unit) the Developer is to procure that the purchaser of the Private Rental Unit enter into the Private Rental Deed (or where the Developer or any Associated Company holds the Private Rental Unit as an investment, the Developer is to enter into such deed) so that the disponent (or any successor) or the Developer (as the case may be) is required to pay the Additional Overage for the Units subject to the Private Rental Change of Use to the Council on the Additional Overage Payment Date and the Developer is to provide the relevant Private Rental Deed as soon as reasonably practicable to the Council and in any event within 10 Working Days of the relevant Disposal or use.
- 5.6 On the earlier of payment of all Additional Overage to be paid on any Private Rental Change of Use and expiry of the period of ten years from the later of (i) the date hereof or (ii) the date of the Private Rental Deed from the Developer in relation to the Relevant Plot (if there is one) the provisions in this Schedule relating to Private Rental and Additional Overage in relation to the Relevant Plot shall cease to be of any further force or effect.
6. Incentive Fund/ KPIs
- 10% of any Sales Overage and 10% of any Development Overage is to be paid to the Council to be held (and as permitted distributed) in the KPI Incentive Fund in accordance with the Business Plan
7. Legal Charge
- The Developer will enter into the Legal Charge and will procure the Developer's Principal Agent enters into the Legal Charge over the Private Residential Units on the date of each Plot Lease Completion Date for the protection of the Sales

Overage and Development Overage and any other financial payments payable to the Council pursuant to this Agreement in relation to that Plot.

8. General Financial Provisions

- 8.1** The Developer is to use reasonable endeavours to seek grant funding and any other public subsidy for each Plot so as to assist viability of the Development and accelerate delivery.
- 8.2** All financial information relating to Development Costs, Development Receipts or any other matters relating to the Development and/or this Agreement is to be shared by the Developer with the Council within five Working Days of request on an open book basis (with such reasonable supporting evidence as the Council may consider necessary).
- 8.3** Wherever practicable and commercially sensible the Developer must mitigate its Development Costs.
- 8.4** In this Schedule all references to the Developer shall where the context so permits or requires include any Associated Company or Connected Person.
- 8.5** The parties shall act in good faith in their dealings with each other in respect of their obligations in relation to this Agreement and the Buyer shall not act in a way which is intended to circumvent the operation of the provisions of this Schedule.
- 8.6** At the first date of assessing Viability for a Plot pursuant to Schedule 6, or if later the date the proposed use of any Commercial Units at a Plot is identified pursuant to the Business Plan, the Steering Group will seek to agree a suitable Developer's Priority Return for the relevant Commercial Units (being no more than 21% of Development Receipts relating to the relevant Commercial Units) so as not to disincentivise or overly reward the Developer for such Units (it being acknowledged that a Pre-letting of such Units will reduce the development risk for the Developer so a reduced Developer's Priority Return will be appropriate) and where such revised percentage is agreed this is to be used as the Developer's Priority Return for such Units for the purposes of this Agreement.

PART 2- OVERAGE AND PUBLIC SECTOR FUNDING WORKED EXAMPLES

1. FIRST DEVELOPMENT SITE SALES OVERAGE (SCHEDULE 4, CLAUSE 1.4.4)

Input assumptions for overage example:

A - Private residential net sales receipt £116,100,000 (228,552ft² @ £500/ft² + 152nr parking @ £12,000)

B - Private rent capitalised sum £16,500,000 (£1,100,000 gross rent x 75% x 20)

C - Additional bulk sales - none

D - Base values £124,532,722 (Private sale 228,552ft² @ £471/ft² + 152nr parking @ £10,000. Private rent 39,805ft² @ £386)

E - Sales incentives £1,500,000

Overage calculation:

Overage X = ((A+B+C)-D-E)

= ((£116,100,000 + £16,500,000 + £0) - £124,532,722 - £1,500,000)

= £6,567,278

Council's Sales Overage = X x Agreed Percentage

Council's Sales Overage = £6,567,278 x 50%

Council's Sales Overage = £3,283,639

2. SUBSEQUENT PLOTS SALES OVERAGE (SCHEDULE 4, PARAGRAPH 2.4)

Input assumptions for overage example:

AP - Agreed percentage - 50%

DR - Development receipts - £130,000,000 (200,000ft² @ £550/ft² + affordable housing £20,000,000)

MV - Market value unsold units - £500,000 (1nr @ £500,000)

ABS - Additional bulk sales - £0

PR - Private rent capitalised sum £3,750,000 (£250,000 gross rent x 75% x 20)

DC - Development costs, sales incentives, part ex costs £106,800,000 (340,000ft² @ £220/ft² = £74,800,000 + land £10,000,000 + other costs £20,000,000 + incentives £2,000,000)

Developer's priority return - £23,100,000 (21% x £110,000,000)

Overage calculation:

Development Overage = (DR+MV+ABS+PR)-(DC+DPR))

= (£130,000,000 + £500,000 + £0 + £3,750,000)-(£106,800,000+£23,100,000)

= £4,350,000

Council's Development Overage = Development Overage x Agreed Percentage

Council's Development Overage = £4,350,000 x 50%

Council's Development Overage = £2,175,000

3. ADDITIONAL OVERAGE DEFINITION

Input assumptions for example:

A - Open market value of units - £12,000,000

B - Market value of units for PRS - £11,400,000

Y - Nr years used for PRS - 6

$$X = 100 - (10 \times Y)$$

$$X = 100 - (10 \times 6)$$

$$X = 40$$

Calculation:

$$X\% \times (A-B)$$

$$40\% \times (£12,000,000 - £11,400,000)$$

$$£240,000$$

4. SCHEDULE 4, PARAGRAPH 2.2.2, PLOT PREMIUM APPORTIONMENT

Input assumptions for example:

Y - Number of units in Sub-Plot - 85

Z - Number of units in Plot - 255

P - Plot Premium - £3,900,000

Calculation:

$$X = Y/Z \times P$$

$$X = 85/255 \times £3,900,000$$

$$X = £1,300,000$$

5. SCHEDULE 4, PARAGRAPH 4, PUBLIC SECTOR FUNDING

Input assumptions for example:

Original Plot Premium - £3,900,000

Public Sector Funding secured - £500,000

Unforeseen Costs - £250,000

Plot Premium Payments made to date (1st) £1,300,000 outstanding (2nd and 3rd)
£700,000 and £1,900,000

Calculation:

Revision to 2nd and 3rd Plot Premium Payments:

- £500,000 less £250,000 = £250,000

- £700,000 / £2,600,000 = 26.9%, £1,900,000 / £2,600,000 = 73.1%

- 2nd Payment = £700,000 + (£250,000 x 26.9%) = £767,250

- 3rd Payment = £1,900,000 + (£250,000 x 73.1%) = £2,082,750

SCHEDULE 5

Development Receipts and Development Costs

The following words and phrases have the following meanings for this Schedule:

"Affordable Housing Model"	the Developer's model showing the investment in the Affordable Residential Units by way of the contribution of the Registered Provider Contribution as to the Business Plan
"Below Ground Demolition"	demolition below ground level (which demolition shall for the avoidance of doubt to exclude any Above Ground Demolition works and include any ground floor building slab of any buildings or other structures at the Relevant Plot, any required removal of substructures and/ or Contamination and/or Services Works)
"CHP Plant"	central heating and power plant and utilities for the provision of combined heat and power to the Development Area or any part thereof to be delivered in accordance with the Business Plan
"Cost Consultant"	a qualified chartered Quantity Surveyor with at least 10 years post qualification experience in major residential led development projects
"Payment Date"	(as applicable) any Sales Overage Payment Date or Development Overage Payment Date or Additional Overage Payment Date for the Relevant Plot as respectively defined in Schedule 4
"Registered Contribution"	<div>Provider</div> <div>(a) (subject to any adjustment pursuant to paragraph 5.3 of Schedule 6) in respect of the Plots within Phase 2 the fixed sum payment calculated on the basis set out at section 12 of the Business Plan and in accordance the Affordable Housing Model for each Plot; and</div> <div>(b) in respect of the Plots comprised within Phases 3 and 4 the sums calculated on the basis set out in Section 12 of the Business Plan</div>

	and in accordance with the Affordable Housing Model for the Relevant Plot as being payable as the Registered Provider Contribution for the Relevant Plot
"Services Works"	the diversion of existing supplies and services and the installation and connection of new supplies (including foul and surface water drainage, gas, water and electricity supplies and telecommunications)
"Temporary Hub"	the temporary hub to be delivered at the Development Area in accordance with this Agreement and the Business Plan

PART 1: DEVELOPMENT ACCOUNT

1. Development Account
 - 1.1 The Developer is to procure there is operated and maintained the Development Accounts until the final Payment Date for the final Plot to be developed and practically completed under this Agreement. This may be done on a Development Area, Plot and/or Sub-Plot basis.
 - 1.2 (Subject to paragraph 1.6) the Developer is to debit directly to the Development Account all Development Costs paid or incurred by the Developer in carrying out the Development Works on or before the Payment Date for the Relevant Plot.
 - 1.3 The Developer is to credit to the Development Account all Development Receipts.
 - 1.4 The Developer is to submit to the Council a statement of the Development Account at quarterly intervals such statement being subject to the retrospective audit of the Development Account by the Council and professional advisors.
 - 1.5 The Developer is to retain at a place where the Council can reasonably inspect them and allow the Council, its accountants and consultants to have access to and inspect all accounts and other written or computer records or documents which are, or in the reasonable opinion of the Council ought to be, maintained for the purpose of recording and verifying the Development Costs including:
 - 1.5.1 all VAT and other tax returns and records;
 - 1.5.2 bank records and statements;

- 1.5.3 copies of invoices, certificates, bill and demands relating to the Development Works; and
- 1.5.4 copies of the certificates issued under any Building Contract for the Relevant Plot authorising or certifying that a payment is due under the Building Contract.
- 1.6 As soon as reasonably practicable and in any event not later than 12 months following the Date of Practical Completion of the Relevant Plot the Developer will procure a statement of account for that Plot of the Development Costs and Development Receipts based on the actual Development Costs and actual Development Receipts and provide a copy of this to the Council within 10 Working Days of its preparation.
- 1.7 In calculating the Development Costs and Development Receipts there shall be no double counting.
- 1.8 The Developer acknowledges to the Council that it owes the Council a duty of the utmost good faith to maintain full and accurate Development Accounts to enable the Council properly and accurately to determine the Development Costs.
- 1.9 A Cost Consultant is to be appointed by the Developer (approved by the Council and Developer) who will monitor and audit all costs as an accurate reflection of Development Costs and who will certify that such costs satisfy the Parties' requirement for value for money and which certification shall deem the relevant costs to be proper and reasonable for the purposes of this Agreement although the costs will remain subject to alterations identified under the Council's right to audit under paragraph 1.13.
- 1.10 The Cost Consultant will be jointly liable to the Council and Developer and will be appointed on terms acceptable to the Council (acting reasonably) and on or before commencing their review of the Development Costs will provide a collateral warranty to the Council in a form acceptable to the Council (acting reasonably). The Cost Consultant shall owe an equal duty of care to both parties.
- 1.11 The Cost Consultant will be required to inspect the Development Works on any Relevant Plot on a quarterly basis and provide advice to the Parties on cost mitigation and value engineering generally.
- 1.12 Each Development Account is to be presented in the form of the Financial Model.
- 1.13 The Council may at any time require the Development Account to be audited by an independent firm of chartered accountants and other consultants as well as the Cost Consultant. If such an audit shows that Development Costs have been overstated by more than 5%, the cost of the audit is to be paid by the Developer to the Council on demand.

2. Cashflow statement

2.1 The Developer is to provide to the Council quarterly and also within ten Working Days of any request for it made by the Council a written cashflow statement in the form of the Financial Model showing:

2.1.1 the total of all Development Costs incurred by or on behalf of the Developer;

2.1.2 the Development Costs which the Developer reasonably anticipates will be incurred before the next cashflow statement is produced; and

2.1.3 except in the case of the first cashflow statement, the Development Costs incurred by the Developer since the previous cashflow statement indicating:

2.1.3.1 whether the Development Costs incurred were included in the anticipated expenditure shown in the previous cashflow statement;

2.1.3.2 any variations between the sums anticipated and the sums actually incurred; and

2.1.3.3 where there has been apportionment of Development Cost between Plots pursuant to paragraph 10 of Part 2 of this Schedule, the calculation (and any necessary supporting evidence) of how the Development Costs were apportioned.

PART 2: DEVELOPMENT COSTS

1. Development Costs

1.1 The Development Costs are (subject to paragraph 9.4) all reasonable and proper costs incurred or committed to whether contractually by statute or otherwise for payment by the Developer or the Developer's Principal Agent plus any properly incurred VAT either is unable to recover relating to the Development and/or the Objectives and (without limitation) include the categories set out below in paragraphs 2 to 9 (inclusive) of this Part 2 of this Schedule. Unless expressly stated to the contrary they are exclusive of Value Added Tax.

1.2 The Developer is not to debit any costs to the Development Account where the Developer has incurred those costs as a direct or indirect result of any default of the Developer under this Agreement (or any documents to be entered into pursuant to it) under the Building Contract, under any Appointment or under any agreement for lease or agreement for sale.

2. Property acquisition

2.1 The Development Costs for the acquisition of the Development Area include:

2.1.1 (subject to paragraph 9.4) any payments due to the Council pursuant to this Agreement stamp duty land tax and Land Registry fees payable by or on behalf of the Developer for the acquisition of any Outstanding Interests or Third Party Interests by the Developer or the Developer's Principal Agent (save to the extent that such costs are otherwise funded by the Council and the acquisition of any interests from the Council or third party to enable the Development);

2.1.2 the Council's Management Fee; and

2.1.3 the Transport Improvements Fee.

2.2 Penalties or interest payable consequent upon a submission of a land transaction return or payment of stamp duty land tax out of time will not form part of the Development Costs.

3. Planning

3.1 Subject to the exclusions in paragraph 9.4.12 of this Part 2, the Development Costs for planning include:

3.1.1 the proper legal fees, planning consultants' fees and disbursements for obtaining planning permission seeking Counsel's Opinion, making Appeals, defending Planning Proceedings;

3.1.2 the fees payable to the local planning authority for applications for planning permission;

3.1.3 the costs of entering into and complying with any Planning Agreement including any financial liabilities/ payments;

3.1.4 any financial liabilities arising pursuant to Mayoral or Borough Community Infrastructure Levy (or any replacement charge); and

3.1.5 costs of any surveys or reports required as part of any Planning Application and EIA (as defined in Schedule 8);

3.1.6 costs to obtain and enforce Stopping Up Orders.

4. Development Works

4.1 The Development Costs for the Development Works include:

- 4.1.1 all payments to be made to the Building Contractor under the Building Contract;
- 4.1.2 the proper and reasonable fees incurred by the Developer for obtaining the Statutory Consents;
- 4.1.3 the proper and reasonable fees payable by the Developer to any company or authority for the carrying out of the Services Works;
- 4.1.4 the agreed contract sum for the Above Ground Demolition Works for the First Development Site only;
- 4.1.5 the agreed demolition contract sums for Above Ground Demolition Works for Subsequent Plots where the Council have waived the Demolition Condition in relation to such Plot or Plots;
- 4.1.6 any proper costs not covered by paragraph 4.1.1 in relation to Below Ground Demolition, Contamination, and other Remediation Works;
- 4.1.7 the costs of installing CHP Plant;
- 4.1.8 the cost of installing the Temporary Hub or any other Interim Uses approved by the Council; and
- 4.1.9 the decommissioning costs of the District Heating System and the carrying out of Services Works; and
- 4.1.10 the Developer's Priority Return;

5. Professional fees

5.1 The Development Costs for the professional fees include:

- 5.1.1 the proper legal fees and disbursements in relation to the negotiation of the Appointments and the Building Contract, any Interim Use Leases and any other legal documents required by the Development (save that any fees relating to this Agreement and any variations thereto are not to be Development Costs);
- 5.1.2 the proper fees payable to the members of the Professional Team under the terms of their Appointments; and
- 5.1.3 the proper fees of the Developer's Agent for complying with its obligations under this Agreement;
- 5.1.4 a management fee of 2.00% of the Development Receipts directly receivable from first Disposals of Private Residential Units;

- 5.1.5 the Cost Consultant's proper and reasonable fees.
- 5.2 If an Appointment Default occurs due to the act or default of the Developer, the costs set out in paragraph 5.1.1 for entering into a new Appointment or Building Contract will not form part of the Development Costs.
- 6. Insurance
 - 6.1 The Development Costs for insurance are the proper costs incurred by or on behalf of the Developer in insuring the Development Works;
 - 6.2 The Development Costs exclude:
 - 6.2.1 any costs payable by the Developer towards reinstating the Development Works and the Development Area if the insurance proceeds are insufficient to cover the costs of reinstatement; and
 - 6.2.2 any insurance costs which are reimbursed by any Tenants or occupiers.
- 7. Sales and Letting costs
 - 7.1 The Development Costs for the sale and/or letting of the Development Area are:
 - 7.1.1 the proper cost of all Disposals including any financial incentives or capital contributions made to any Tenant whether payable under its agreement for lease, lease or otherwise and the proper costs of disposal including Sales Incentives and PX Costs
 - 7.1.2 where a Disposal takes place any such Sales Incentives and PX Costs to be capped at a maximum of 5.00% of the Capital Receipts for the Disposal (net of any SDLT and/or VAT and any fees);
 - 7.1.3 for each Relevant Plot the proper promotional marketing and advertising costs or fees incurred by the Developer in relation to the Disposal of the Relevant Plot in accordance with the Marketing Communications and Involvement Strategy approved in advance by the Council;
 - 7.1.4 the proper costs of pre or post occupational snagging or other repair costs or the costs of taking any action against or pursuing any Building Contractor (other than any arising because of Developer's default in its obligations under this Agreement or any Building Contract);
 - 7.1.5 a selling agency fee for the Developer Partner of 1.5% of the Development Receipts for the first Disposals of Private Residential Units for sale at each Plot; and

- 7.1.6 the actual reasonably and properly incurred costs of the construction, maintenance and provision and other costs of the provision of a marketing suite appropriate for the Development Area.
- 7.2 If a freehold sale or letting aborts materially due to the act or default of the Developer in failing to complete it when completion is due, the Developer's costs set out in paragraph 7.1 in relation to a replacement Disposal will not form part of the Development Costs.
- 8. Interim Uses Costs

Any reasonable and proper costs of providing or procuring Interim Uses at the Development Area where such costs are within a budget previously agreed by the Council.
- 9. Other costs
 - 9.1 The Development Costs include any VAT which the Developer is unable to recover from HM Revenue and Customs.
 - 9.2 The Development Costs include any finance charge on incurred Development Costs to be calculated as being the lower of
 - 9.2.1 on the basis of the development cash flow being defined in the Financial Model as 100% debt - funded, a rate being the LIBOR rate from time to time plus 3.75; and
 - 9.2.2 the actual financing charge

such finance charge costs to be incurred in accordance with the requirements of Section 12 of the Business Plan.
 - 9.3 Where the Developer is, on making any payment of the Development Costs, entitled to make a retention from the amount paid, whether under the Building Contract or otherwise, the Developer will be entitled to debit the whole of the payment to the Development Account notwithstanding that the retention has been made.
 - 9.4 The Development Costs do not include:
 - 9.4.1 all costs fees and expenses incurred by the Developer prior to the date of this Agreement (including its legal costs in connection with the negotiation of this Agreement and all documents supplemental to it, and all costs relating to the Developer's tender to the Council for this Agreement);

- 9.4.2 (subject to paragraphs 5.1.4 and 7.1.5 of this Part 2 which are to be classed as Development Costs) the Developer's and the Developer Partner's internal overheads and administrative expenses and fees;
- 9.4.3 any costs incurred in relation to the First Development Site;
- 9.4.4 any costs incurred in relation to any discussions or other matters relating to the Creation Trust;
- 9.4.5 any costs for Above Ground Demolition save for costs allowed under paragraphs 4.1.4 or 4.1.5 of this Part 2;
- 9.4.6 any costs incurred by the Developer in remedying any breach of this Agreement or any breach of any documents entered into pursuant to it;
- 9.4.7 the costs of staff undertaking roles defined as being paid for within the Developer's overheads, including (but not limited to) the MCI Manager, Design Director and Project Director and the employment and housing and community rules defined in the Community and Economic Well-being Strategy in the Business Plan;
- 9.4.8 costs in relation to housing management activities related to post-handover tenant management / customer care;
- 9.4.9 the Registered Provider Contribution;
- 9.4.10 the Plot 18 Infrastructure Fee;
- 9.4.11 the Community Contribution; and
- 9.4.12 any costs relating to the preparation and agreement of the Master Plan and/ or the Satisfactory Hybrid Planning Permission.

10. Apportionment of Development Costs and no double counting

Where any Development Costs relate to more than one Plot, there are to be reasonably and properly apportioned across the Plots on the basis of the anticipated number of Units for each Relevant Plot pursuant to the Satisfactory Plot Planning Permissions and no Development Costs included in any calculations of Development Costs for a Plot may be included in any calculations of Development Costs for any other Plot.

11. Registered Provider Contribution

- 11.1 The Developer is for each Relevant Plot on Phase 2 in accordance with the timings and other requirements of the provisions of Section 12 of the Business

Plan, to make a nominal credit to the Development Account with the Registered Provider Contribution relating to such Plot or Sub-Plot.

- 11.2 For any Plots excluding the First Development Site and the Plots within Phase 2 the Developer is use reasonable endeavours to secure the Registered Provider Contribution allocated to the Relevant Plot pursuant to the Affordable Housing Model and where secured, is to credit the Development Account in accordance with the timings and other requirements of the provisions of Section 12 of the Business Plan and the requirement of the relevant Plot Implementation Plan with such Registered Provider Contribution or as relates to the Relevant Plot.
- 11.3 Any Registered Provider Contribution is not to be a Development Cost.

PART 3: DEVELOPMENT RECEIPTS

1. Development Receipts are all of the following sums received or receivable by the Developer:
- 1.1 all rents (but here excluding any rents which are ultimately paid to the Council (or to such person as directed by the Council) in accordance with the requirements of any Plot Lease Sub-Plot Lease or Interim Use Lease or rent which are reserved for service charges and/or insurance), insurance proceeds, capital receipts, licence fees, damages, compensation and mesne profits, wayleave income, advertising rights income and car parking fees and any other income or capital sum received or receivable by the Developer from or in respect of the Relevant Plot in respect of a period in each case (apportioned where necessary) up to the Payment Date for the Relevant Plot provided that in the case of insurance proceeds damages and compensation the same relate to losses which comprise Development Costs (for the avoidance of doubt such receipts to include any Registered Provider Contribution) including but not limited to all proceeds from Disposals of Units;
- 1.2 on receipt, any VAT recovered from HM Revenue and Customs where the corresponding amount of VAT has already been debited to the Development Account as a Development Cost;
- 1.3 For Plot 18 only, the payments referred to at paragraph 5.2 of Schedule 6 and not the Developer's Priority Return; and
- 1.4 any Public Sector Funding received.

SCHEDULE 6

Viability Condition

1. Definitions

In this Schedule the following words and expressions have the following meanings:

"Affordable Residential Unit Market Value" in relation to an Affordable Residential Unit the definition given to "market value" in the Red Book, assuming that:

- (a) the Unit is available on a lease term of 250 years commencing on the date which is one month after the relevant Date of Practical Completion (which date shall be estimated, if necessary, whenever Affordable Residential Unit Market Value is being calculated);
- (b) Practical Completion of the relevant Unit has occurred and the relevant Unit is fitted out to the standard expected of the market in this location;
- (c) the buyer will have the benefit of all rights and easements required for the beneficial occupation of the Unit;
- (d) (subject to (a) above) the Unit is to be let on the terms of the relevant lease that relates to the Unit (being either the Target Rents Tenancy Agreement, the Shared Equity Lease or the Shared Ownership Lease)

"Agreed Proportion"	<p>(a) Where the Eligible Development Costs are solely attributable to the Relevant Plot: 100%;</p> <p>(b) Where the Eligible Development Costs relate to a Combined Infrastructure Area : X% where:</p>
	$X = Y/Z \times 100$
	Where:
	Y is to be the Internal Area of the Relevant Plot
	Z is to be the estimated Internal Area of the Combined Infrastructure Area (including the Relevant Plot) as calculated by reference to the Satisfactory Plot Planning Permission (or where there is no Satisfactory Plot Planning Permission, Section 11 of the current Business Plan at the date of calculation)
"Combined Infrastructure Area"	the Plots which share Infrastructure Works at the Development Area as identified in the Design and Technical Strategy
"Eligible Development Costs"	the Agreed Proportion of the aggregate of Development Costs incurred or estimated to be incurred in relation to the Development Works for the Relevant Plot in accordance with the Satisfactory Plot Planning Permission as calculated at the date of submission of the relevant Financial Appraisal to the Council but excluding any Developer's Priority Return
"Eligible Development Receipts"	the aggregate of the Development Receipts received in respect of the relevant Plot or estimated to be receivable after Practical Completion of the Relevant Plot as calculated as at the date of submission of the relevant Financial Appraisal to the Council
"External Area"	the gross external area of the Relevant Plot measured in accordance with the Code of Measuring Practice (Eighth Edition) RICS 2014

		as updated or revised from time to time
"Interim Assessment"	Viability	a Financial Appraisal carried out pursuant to the requirements of paragraph 2 of this Schedule
"Non-Residential Value"	Market	<p>the "market value" of the non-residential elements of any Relevant Plot calculated in accordance with the definition given to it in the Red Book assuming that:</p> <ul style="list-style-type: none"> (a) each relevant Unit is available on a lease term of 250 years commencing on the date which is one month after the relevant Date of Practical Completion (which date shall be estimated, if necessary, whenever Non-Residential Market Value is being calculated); (b) Practical Completion of each relevant Unit has occurred and each relevant Unit is fitted out to the standard expected of the market in this location from time to time; (c) the buyer will have the benefit of all rights and easements required for the beneficial occupation of the interest
"Positive Land Price"		the Residual Land Value of a Relevant Plot being a positive value greater than or equal to nil
"Residual Land Value"		<p>the sum calculated as follows:</p> $RLV = DR - (EDC + DPR)$ <p>where:</p> <p>RLV= Residual Land Value</p> <p>DR = Eligible Development Receipts</p> <p>DPR = Developer's Priority Return</p> <p>EDC = Eligible Development Costs (but</p>

here excluding the Developer's Priority Return)

"RICS"	The Royal Institution of Chartered Surveyors
"RICS New Rules of Measurement Guidance"	of the RICS document entitled "RICS NRM1: New Rules of Measurement - Order of Cost Estimating and Elemental Cost Planning, 2 nd edition dated 24 April 2012 and available from the RICS website as may be updated from time to time
"Private Residential Unit Market Value"	<p>Unit in relation to a Private Residential Unit the definition given to it in the Red Book assuming that:</p> <ul style="list-style-type: none"> (a) a single Private Residential Unit is available on a lease term of 250 years commencing on the date which is one month after the relevant Date of Practical Completion (which date shall be estimated, if necessary, whenever Private Residential Market Value is being calculated); (b) Practical Completion of the relevant Private Residential Unit has occurred and it is fitted out to the standard expected of the market in this location; (c) the buyer will have the benefit of all rights and easements required for the beneficial occupation of the Private Residential Unit
"Unit Market Value"	the market value of all the Units of a Relevant Plot as determined pursuant to paragraphs 4.1.4 and 4.2 of this Schedule
"Valuation Panel"	a panel approved by the Steering Group of no less than three valuers with experience in major housing led regeneration projects and knowledge of the local market

"Viable"	the Development is Viable where the relevant Financial Appraisal shows that the Council would receive a Positive Land Price:
	<ul style="list-style-type: none"> (a) for the Relevant Plot; and (b) for the whole of the Development Area if the Developer were to carry out the Development of the Relevant Plot
"Viability Test"	a test to determine whether (as the context requires) the Development Area or a Plot is Viable, such Viability Test to be carried in accordance with this Schedule

PART 1

1. The Development Viability Condition
 - 1.1 The Development Viability Condition is the current Financial Appraisal at the date of the relevant Viability Test for the whole of the Development Area (excluding any Plots where the Unconditional Date has then arisen) showing the Development of the Development Area to be Viable.
 - 1.2 For the avoidance of doubt, in assessing Viability for the Development Area it is acknowledged that some Plots may not, at the date of the Financial Appraisal, be on their own, Viable; the intention is to assess whether the development of the Development Area (excluding any Plots where the Unconditional Date has arisen) as a whole is Viable.

PART 2

2. Interim Viability Assessments
 - 2.1 At any time before the Unconditional Date for a Relevant Plot the Developer may carry out an Interim Viability Assessment and the Developer shall give at least 20 Working Days notice (unless the Council waives this requirement) to the Council so the Council can confirm whether it wishes to opt to tax the Relevant Plot and if it does not within that period it shall not opt to tax such Relevant Plot.
 - 2.2 On the Council's request the Developer is to carry out an Interim Viability Assessment at any time where:
 - 2.2.1 the Council is considering proceeding with a CPO to assist with the satisfaction of the Vacant Possession Condition and requires a Financial Appraisal so as to support the case for a CPO; and/or

- 2.2.2 prior to the submission of a Planning Application; and/or
- 2.2.3 prior to the letting of a Demolition Contract pursuant to Schedule 10.

3. The Plot Final Viability Condition

3.1 Subject to paragraph 3.2, the Plot Final Viability Condition is:

- 3.1.1 the Financial Appraisal current at the date of satisfaction or waiver of the balance of the Plot Conditions for the Relevant Plot showing the Development of the Relevant Plot in accordance with the Satisfactory Plot Planning Permission (here meaning, on the development of any Sub-Plot, the whole of the Plot to which it comprises part) to be Viable; and
- 3.1.2 the then current Financial Appraisal for the whole of the Development Area excluding any Plots where the Unconditional Date has arisen and subject to paragraph 1.2 of Part 1 of this Schedule above showing the Development of the Development Area to be Viable.

3.2 The Plot Final Viability Condition and Development Viability Condition are not to apply to the First Development Site.

3.3 The Premium payable for the Relevant Plot is to be the Positive Land Price for the Relevant Plot.

4. Viability Test

4.1 Whenever a Financial Appraisal is carried out the Developer shall:

- 4.1.1 do so in a fair and reasonable manner;
- 4.1.2 estimate the Eligible Development Costs on a fair and reasonable basis and as accurately as practicable, it being acknowledged that in relation to the Eligible Development Costs it will be reasonable for contingencies and allowances appropriate to the stage of design development and in accordance with the RICS New Rules of Measurement Guidance to be permitted as Eligible Development Costs for the purposes of assessing whether the Plot is Viable only;
- 4.1.3 measure the incurred Eligible Development Costs as accurately as reasonably possible;

- 4.1.4 subject to paragraph 4.2, estimate the Eligible Development Receipts and the estimated Developer's Priority Return in good faith on the basis of
- 1.1.1.1 the Private Unit Market Values of all Private Residential Units at the Relevant Plot;
- 4.1.4.2 the Affordable Residential Unit Market Values of all Affordable Residential Units at the Relevant Plot; and
- 4.1.4.3 the Non-Residential Market Values of all other Units at the Relevant Plot; and
- 4.1.5 assume that all Private Residential Unit Disposals are Disposals of individual Units and not Bulk Sales and/or Private Rental Units (unless the Steering Group have approved the use of specified Units as Private Rental Units)
- 4.2 In estimating the Eligible Development Receipts for a Relevant Plot the Council may require the Developer to instruct (on behalf of both the Council and the Developer) the Valuation Panel to provide their estimate (addressed to both the Developer and the Council) for the Relevant Plot (such estimate to be calculated on the basis of values at the date of the Financial Appraisal) of:
- 4.2.1 the Private Residential Unit Market Values of all Private Residential Units;
- 4.2.2 the Affordable Residential Unit Market Values of all Affordable Residential Units; and
- 4.2.3 the Non-Residential Market Values of all other Units at the Plot
- And the aggregate of such values shall be divided by the number of valuers appointed and shall then be taken for the purposes of the Financial Appraisal as the Eligible Development Receipts for the Relevant Plot.
- 4.3 The Developer shall be responsible for the costs (if any) of the said valuers.
- 4.4 At any time either the Council or the Developer may recommend suitable valuers for consideration for the Valuation Panel and the parties shall act reasonably in agreeing the Valuation Panel as soon as reasonably practicable after written request by either Party.
- 4.5 If the Parties are unable to agree at least three valuers for the Valuation Panel within 20 Working Days of request from either Party, either Party may refer the matter for determination pursuant to clause 14 of this Agreement.

- 4.6 The Developer is to procure that any member of the Valuation Panel giving a valuation pursuant to paragraph 4.2 above provides a collateral warranty in a form acceptable to the Council (acting reasonably) to the Council on or before the date of the valuation so the Council can rely on such valuation.
- 4.7 Forthwith following the carrying out of each Financial Appraisal the Developer shall provide the Council with full details as to how the Financial Appraisal has been carried out, which shall include (without limitation) full details of the incurred Eligible Development Costs and the estimated Eligible Development Costs and the estimated Eligible Development Receipts and a copy of the Financial Appraisal as run.
- 4.8 Where the Viability Test is not satisfied
- 4.8.1 If at any time before the Unconditional Date for a Relevant Plot the Developer carries out a Financial Appraisal and considers that there is no reasonable prospect of satisfying the Development Viability Condition and/or Plot Final Viability Condition the Developer may serve a notice (a "No Viability Notice") on the Council stating that there is no reasonable prospect of satisfying the Development Viability Condition and/or Plot Final Viability Condition (as the case may be). Any such notice must include with it the information referred to in paragraph 4.7 of this part 2 above.
- 4.8.2 Within 20 Working Days of receipt of a No Viability Notice the Council may serve notice ("Viability Referral Notice") on the Developer requiring that the matter as to whether there is no reasonable prospect of satisfying the Development Viability Condition and/or Plot Final Viability Condition (as the case may be) is referred for dispute resolution which is to be in accordance with clause 14 save that it will be an additional requirement for the ~~Specialist~~ to ensure that where required it will seek specialist expertise in relation to the review of revenue costs.
- ~~4.8.3~~ Any dispute resolution sought pursuant to paragraph 4.8.2 above is to cover, without limitations, any of the following:
- 4.8.3.1 whether the Developer has estimated the future Eligible Development Costs and the Eligible Development Receipts on a fair and reasonable basis and as accurately as possible;
- 4.8.3.2 whether the Developer has measured the incurred Eligible Development Costs accurately;

4.8.3.3 whether the Developer, in undertaking the Financial Appraisal, has adopted the methodology shown in the Financial Model.

4.8.4 If the Specialist determines that at the time that the Specialist makes his determination there is no reasonable prospect of satisfying the Development Viability Condition and/or Plot Final Viability Condition (as the case may be) then the Developer and the Council are within 20 Working Days of such determination to meet to seek to consider whether there are amendments to the Business Plan and/or Plot Implementation Plan for the Relevant Plot that could be made which are acceptable to the Parties and which could allow the Plot and/or Development to become Viable, such proposals to be considered in accordance with the Change Procedure.

4.8.5 If such changes are agreed, the Developer is to re-run the Financial Appraisal for the Plot and the Development, and is to confirm as soon as reasonably practicable whether the Developer now considers the Plot and/or Development to be Viable and the parties are then to follow the procedure set out in this Schedule to determine whether the Plot and the Development are Viable.

4.8.6 If a Plot is not found to be Viable within 36 months of the date of being initially found not to be Viable either party can terminate the Agreement so far as it relates to that Plot and any other Plots for which the Unconditional Date has not then occurred, and the Council will be from such date free to deal from that date with the Development Area (excluding any Plots where the Unconditional Date has occurred) as it sees fit.

4.8.7 Where a Plot is found to be Viable within the 36 month period referred to at paragraph 4.8.6 above, the Council will (acting reasonably and having regard to the considerations set out in paragraph 4.7) within the forum of the Steering Group consider, at the Developer's request, an extension to this Agreement and any Milestones affected due to the delay in satisfying the Plot Final Viability Condition for the Plot provided that the cumulative extensions to any Milestones do not extend beyond the Development Longstop Date. Any changes agreed pursuant to paragraph 4.8.4 are to be considered in the context of their affect on the timing of the implementation of the Development over the entirety of the Development Area.

5. Plot 18 Viability

5.1 In assessing Viability for Plot 18 the Developer is to include within its Financial Appraisal as Eligible Development Receipts:

5.1.1 the Plot 18 Infrastructure Fee;

5.1.2 at the Council's option, were the Council confirms in writing at any time it will make such payment, such other payment towards delivery of public realm and facilities as may be specified by the Council;

5.1.3 such part of the Registered Provider Contribution for Phase 2 as the Council requires (acting reasonably) to be allocated to Plot 18

5.2 The Council is to pay to the Developer for the Plot 18 Facilities the sum as set out in the Financial Appraisal as the price for the Plot 18 Facilities (up to a maximum sum of no greater than the Plot 18 Infrastructure Fee) and any sums payable pursuant to paragraph 5.1.2 on the Completion Date of the Plot Lease for Plot 18.

5.3 For the avoidance of doubt where any part of the Registered Provider Contribution for Phase 2 is apportioned to Plot 18, the Registered Provider Contribution for Phase 2 is to be reduced by such sum for the purpose of carrying out any Viability Test for any Plot within Phase 2.

6. Waiver

The Development Viability Condition and the Plot Final Viability Condition for a Plot may only be waived by mutual agreement of the parties.

SCHEDULE 7

Funding Condition

1. Funding Condition

1.1 Subject to paragraph 1.2 below, the Funding Condition for a Relevant Plot is:

- 1.1.1 the Developer or Developer's Principal Agent entering into the Developer Funding Agreement or confirming to the Council that the Developer or Developer's Principal Agent is wholly self-funding the development of the Relevant Plot and no Developer Funding Agreement is necessary the Developer or Developer's Principal Agent providing such evidence as the Council may reasonably require to evidence that it has sufficient access to Developer Funding for the successful delivery of the Relevant Plot (such evidence might include a letter from the Developer's chief finance officer and/or Developer's bankers); or
- 1.1.2 where a Developer Funding Agreement is required the Developer Funding Agreement becoming unconditional upon its own terms (save for any condition relating to the requirement for this Agreement to become unconditional); and
- 1.1.3 the Council approving the Developer Funding Agreement and the identity of the Investor proposed to provide the Developer Funding (such approval not to be unreasonably withheld or delayed).

1.2 The Funding Condition is not to apply to the First Development Site.

2. The Developer's Obligations

2.1 The Developer shall notify the Council whether a Developer Funding Agreement for a Relevant Plot is required as soon as reasonably practicable (having regard to the Milestones and the requirements of the Business Plan and (where available) any relevant Plot Implementation Plan) during the Conditional Period for the Relevant Plot and where it does so it is to use reasonable endeavours to negotiate and agree both the quantum of Developer Funding and (where a Developer Funding Agreement is required) the terms and conditions of the Developer Funding Agreement as soon as reasonably practicable and considered expedient for the Relevant Plot having regard to the Milestones and the requirements of the Business Plan.

2.2 The Developer or Developer's Principal Agent shall enter into and exchange the Developer Funding Agreement as soon as reasonably practicable after the quantum of Developer Funding and the terms and conditions of the Developer

Funding Agreement have been agreed pursuant to paragraph 2.1 and 1.1.4.

3. Waiver

The Funding Condition may only be waived by mutual agreement.

SCHEDULE 8

Planning Condition

PART 1: PLANNING PERMISSION

1. Defined terms

1.1 In this Schedule, the following words and expressions have the following meanings:

"Appeal"

all or any of the following:

- (a) an application to the local planning authority under section 73 of the Planning Act against the presence of an Onerous Condition in a Planning Permission;
- (b) an application to the Secretary of State under sections 78 and 79 of the Planning Act following a Planning Refusal by the local planning authority; or
- (c) a Calling-In

"Calling-In"

a direction by the Secretary of State that a Planning Application be referred to him for determination under section 77 of the Planning Act

"Challenge Period"

the following periods, each calculated from and including the relevant Permission Date:

- (a) following the grant of the Satisfactory Hybrid Planning Permission or a Satisfactory Plot Planning Permission by the local planning authority (including after the determination of an application under section 73 of the Planning Act), the period of eight weeks or such other period as is provided for by statute for persons to apply for leave for judicial review

from time to time; or

- (b) following the grant of Satisfactory Hybrid Planning Permission or Satisfactory Plot Planning Permission by or on behalf of the Secretary of State, the period of six weeks

"Hybrid Planning Application"

a detailed planning application for the development of the First Development Site (including any EIA required by the local planning authority for the First Development Site and/or the Development Area) and an outline application for the development of the remainder of the Development Area, to be approved by the Council in accordance with the paragraph 2 of Part 2 of this schedule

"Hybrid Planning Period"

the period expiring on the Longstop Date for Vacant Possession of the First Development Site as set out in Schedule 2 subject to extension in accordance with Part 2 of this Schedule

"EIA"

an environmental impact assessment for the whole of the Development Area to be prepared by the Developer in accordance with a scope agreed with the local planning authority

"First Development Site Planning Period"

the Hybrid Planning Period

"Inspector"

any person appointed by the Secretary of State under the Planning Act to determine appeals made under section 78 of the Planning Act or to determine a Calling-In

"Onerous Condition"

has the meaning given to it in paragraph 1 of Part 4 of this Schedule

"Permission Date"

the date of the Satisfactory Hybrid Planning Permission or the relevant Satisfactory Plot Planning Permission (as the case may be) (or where the relevant Planning Permission and any relevant conservation area consent (if any) are granted on different dates then the later of

those) which in each case means the date written, printed or stamped on the relevant Planning Permission (or if applicable relevant conservation area consent) issued by the local planning authority or the letter or other document issued by the Secretary of State or the Inspector following an Appeal or a Calling-In

"Planning Application"

as the context requires:

- (a) the Hybrid Planning Application; and/or
- (b) a Plot Planning Application;

"Planning Counsel"

such planning counsel of not less than ten years' calling experienced in town and country planning matters as the Council and the Developer may agree from time to time (both acting reasonably)

"Planning Decision"

a Planning Refusal or the grant of Planning Permission whether by the local planning authority, the Secretary of State or an Inspector

"Planning Default"

one or more of the following:

- (a) the Developer does not submit the relevant Planning Application in accordance with (for a Hybrid Planning Permission) paragraph 2.2 of Part 2 of this Schedule or (for a Plot Planning Permission) paragraph 1.2 of Part 3 of this Schedule;
- (b) a Calling-In;
- (c) a Planning Refusal which does not arise from a failure to give notice of a decision within the period required under section 78(2) of the Planning Act and Planning Counsel advises that there is not a reasonable chance

of an Appeal or Planning Proceedings resulting in the grant of Satisfactory Hybrid Planning Permission or Satisfactory Plot Planning Permission (as the case may be);

- (d) a failure to obtain Satisfactory Hybrid Planning Permission or to exchange any Planning Agreement necessary to implement a Satisfactory Hybrid Planning Permission within the Hybrid Planning Period;
- (e) a failure to obtain Satisfactory Plot Planning Permission or to exchange any Planning Agreement necessary to implement a Satisfactory Plot Planning Permission within the Plot Planning Period

"Planning Permission"

planning permission for the Development (or part thereof) granted pursuant to a Planning Application by the local planning authority or by the Secretary of State or an Inspector.

"Planning Proceedings"

all or any of the following:

- (a) an application made for judicial review by a third party following the grant of a Planning Permission by the local planning authority;
- (b) an application for judicial review by the Developer following a Planning Refusal by the local planning authority;
- (c) an application made under section 288 of the Planning Act by a third party following the grant of Planning Permission by the Secretary of State or an Inspector;
- (d) an application made under section 288 of the Planning Act by the Developer

following a Planning Refusal by the Secretary of State or an Inspector;

- (e) any appeal to a higher court made against a judgement given in a lower court; or
- (f) an application for breach of Human Rights under the Human Rights Act 1998.

"Planning Refusal"

any of the following:

- (a) a refusal by the local planning authority to grant planning permission pursuant to a Planning Application;
- (b) a refusal by the local planning authority to vary or remove an Onerous Condition pursuant to an application made by the Council or the Developer (as the case may be) under section 73 of the Planning Act;
- (c) a refusal by or on behalf of the Secretary of State to grant planning permission following a Planning Appeal or a Calling-In;
- (d) a failure by the local planning authority to determine the Planning Application within the period required under section 78(2) of the Planning Act; or
- (e) the grant of a Planning Permission which is subject to any Onerous Condition or requires a Planning Agreement to be entered into on terms which contain an Onerous Condition

"Plot Planning Application"

the application for reserved matters consent pursuant to a Satisfactory Hybrid Planning

	Permission for the Development comprised within a Plot to be approved prior to submission by the Council in accordance with the paragraph 1 of Part 3 of this Schedule.
"Plot Planning Period"	the period of 18 months from and including the date of the satisfaction of the Plot Planning Condition subject to extension in accordance with Part 3 of this Schedule
"Satisfactory Hybrid Planning Permission"	<p>a Planning Permission issued pursuant to the Hybrid Planning Application that does not contain:</p> <ul style="list-style-type: none"> (a) any Onerous Conditions; or (b) any conditions or stipulations requiring a Planning Agreement to be entered into on terms that contain any Onerous Conditions
"Satisfactory Plot Planning Permission"	<p>full reserved matters approval pursuant to a Satisfactory Hybrid Planning Permission for a Plot (other than the first Plot within the First Development Site) that does not contain:</p> <ul style="list-style-type: none"> (a) any Onerous Conditions; or (b) any conditions or stipulations requiring a Planning Agreement to be entered into on terms that contain any Onerous Conditions
"Secretary of State"	the Secretary of State or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Planning Act

PART 2 :HYBRID PLANNING PERMISSION

2. Obtaining Hybrid Planning Permission for the First Development Site
- 2.1 The Developer is to from the date of this Agreement to use reasonable endeavours to procure the preparation of the Hybrid Planning Application as soon as reasonably practicable and in any event by 2 months prior to the "Submission of Planning Application" Milestone Date for the First Development Site as set out in Schedule 2 to provide the Hybrid Planning Application to the Council for its

approval (not to be unreasonably withheld or delayed (provided that it shall be deemed reasonable for the Council to withhold its consent where the Plot Planning Application is not in accordance with the Business Plan)).

- 2.2 Subject to the Council approving the Hybrid Planning Application pursuant to paragraph 2.1 above the Developer is as soon as reasonably practicable and in any event by the end of April 2015 to lodge the Hybrid Planning Application with the local planning authority and is to use reasonable endeavours to obtain a Satisfactory Hybrid Planning Permission for the First Development Site as soon as reasonably practicable after the date of this Agreement and in any event by the relevant Longstop Date.
- 2.3 Neither the Developer nor the Council is to commence Planning Proceedings following the grant of a Satisfactory Hybrid Planning Permission.
- 2.4 Following the grant of Satisfactory Hybrid Planning Permission for the First Development Site, the Plot Planning Condition will not be satisfied until:
 - 2.4.1 the relevant Challenge Period has expired without Planning Proceedings being commenced; or
 - 2.4.2 if Planning Proceedings are commenced during the Challenge Period, those proceedings are finally disposed of leaving in place a Satisfactory Plot Planning Permission; and
 - 2.4.3 in each case, any Planning Agreement required to implement the terms of a Satisfactory Hybrid Planning Permission has been completed.
- 2.5 If the First Development Site Planning Period would otherwise come to an end, the First Development Site Planning Period is to be extended as follows:
 - 2.5.1 following the grant of Satisfactory Hybrid Planning Permission, to the day after the Challenge Period expires;
 - 2.5.2 following a Planning Refusal, to the date eight weeks or such other period as is provided for by statute for persons to apply for leave for judicial review from time to time after the date of the Planning Refusal, subject to further extensions under paragraph 2.5.3;
 - 2.5.3 if the Developer makes an Appeal or commences Planning Proceedings in accordance with this Schedule following a Planning Refusal of the Hybrid Planning Application:
 - 2.5.3.1 if the Appeal or Planning Proceedings result in the grant of a Satisfactory Hybrid Planning Permission, the date following the disposal of the Appeal or Planning

Proceedings calculated in accordance with paragraph 2.5.1;

2.5.3.2 if the Appeal or Planning Proceedings result in a Planning Refusal, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with paragraph 2.5.2; or

2.5.4 if Planning Proceedings are begun by a third party during a Challenge Period, to the date ten Working Days after all Planning Proceedings have been determined or discontinued.

3. The Hybrid Planning Application

3.1 The Developer having lodged the Hybrid Planning Application may, with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed (provided it shall be deemed reasonable for the Council to withhold its consent where the Hybrid Planning Application is not in accordance with the Business Plan):

3.1.1 amend the Hybrid Planning Application made to the local planning authority; or

3.1.2 withdraw the Hybrid Planning Application and immediately submit a fresh Hybrid Planning Application where it is reasonable to do so in order to obtain Satisfactory Hybrid Planning Permission; and

3.1.3 may agree with the local planning authority any extension to the statutory period not exceeding six months for determining the Hybrid Planning Application under section 78(2) of the Planning Act.

3.2 The Developer may enter into negotiations or discussions with the local planning authority to facilitate the grant of the Satisfactory Hybrid Planning Permission but will not enter into any agreement with the local planning authority without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

3.3 The Developer is to:

3.3.1 provide to the Council a copy of the Hybrid Planning Application made to the local planning authority;

3.3.2 keep the Council informed at reasonable intervals, but not more than once in each calendar month, of the progress of the Hybrid Planning Application, amendments made to the Hybrid Planning Application, each withdrawal of the Hybrid Planning Application and details of all discussions and negotiations with the local planning authority;

- 3.3.3 give the Council reasonable prior notice of any meetings with the local planning authority and allow the Developer and its planning consultants to attend those meetings; and
 - 3.3.4 provide the Council with copies of all notes, correspondence, documents and minutes of meetings concerning the Hybrid Planning Application.
 - 3.4 The Council (as landowner only) is to co-operate with the Developer and use reasonable endeavours (where requested and at the Developer's cost) to assist the Developer to obtain a Satisfactory Hybrid Planning Permission.
4. Planning Agreements
 - 4.1 The Developer is to enter into any Planning Agreement required by the local planning authority as a pre-condition of the grant of Planning Permission pursuant to a Plot Planning Application subject to the following conditions being satisfied:
 - 4.1.1 the Developer is to pay the proper and reasonable legal fees and other costs, expenses and liabilities incurred by the Council in approving the terms of the Planning Agreement;
 - 4.1.2 the Planning Agreement does not contain terms which:
 - 4.1.2.1 take effect before the date of the implementation of the Planning Permission, save in respect of payment of legal costs; or
 - 4.1.2.2 are Onerous Conditions, unless waived in accordance with this Schedule; or
 - 4.1.2.3 require the Council to be party to the Planning Agreement save as the local planning authority;
 - 4.1.3 the Planning Agreement is to be conditional on the Development being implemented;
 - 4.1.4 the Planning Agreement is to contain terms that release the Council absolutely from all liability under the Planning Agreement from the relevant Date of Actual Completion; and
 - 4.1.5 the Planning Agreement is in a form approved by the Council, such approval not to be unreasonably withheld or delayed when the requirements of this paragraph 4 are met.
 - 4.2 Notwithstanding paragraph 4.1:

- 4.2.1 to the extent that any Planning Agreement contains terms that take effect before the Date of Actual Completion of the first Plot, the Developer is to indemnify the Council on a full indemnity basis against all proper and reasonable legal fees and other costs, expenses and liabilities incurred in complying with those terms where the Council is required to do so by the local planning authority; and
- 4.2.2 to the extent that any Planning Agreement imposes continuing liability on the Council after the Date of Actual Completion of the first Plot to be drawdown, the Developer is in the Plot Lease, or in any other document which the Council may reasonably require, to indemnify the Council on a full indemnity basis against all actions, claims, demands and proceedings taken or made against the Council and all costs, damages, expenses, liabilities and losses incurred by the Council arising from any breach of that Planning Agreement by the Developer or the Developer's successors in title to that part of the Development Area.

5. Planning Decisions

- 5.1 The Developer is to notify the Council of each Planning Decision in respect of the Hybrid Planning Application and provide a copy of such Planning Decision to the Council not later than ten Working Days after notice of the Planning Decision has been given to the Developer.
- 5.2 If there is a Planning Refusal, the Developer is to notify the Council in writing within four weeks after the date of the Planning Refusal whether it wishes to make an Appeal or commence Planning Proceedings in respect of that Planning Refusal.
- 5.3 Within ten Working Days of receipt of a Planning Permission issued pursuant to the Hybrid Planning Application and any Planning Agreement relating to the Hybrid Planning Application, the Developer is to notify the Council in writing whether it considers that they contain Onerous Conditions which are unacceptable to the Developer and:
 - 5.3.1 if the Developer does not do so, the Council may serve written notice on the Developer requiring the Developer to comply with this paragraph 5.3; and
 - 5.3.2 if the Developer does not respond within two weeks of a notice served under paragraph 5.3.1, the relevant Planning Permission and any Planning Agreement, as the case may be, are to be treated as not containing Onerous Conditions.

- 5.4 If the Developer serves notice under paragraph 5.3 that the Planning Permission or any Planning Agreement in respect of it contains one or more Onerous Conditions the Council may serve notice on the Developer within twenty Working Days of the date of the Developer's notice, requiring the question of whether the Planning Permission contains Onerous Conditions to be determined by a Specialist appointed in accordance with this Agreement.
- 5.5 The Developer may waive its right to object to the terms of the relevant Planning Permission or any Planning Agreement in respect of it because of the presence of a Onerous Condition by serving written notice to this effect on the Council and on the service of notice under this paragraph 5.5, the Developer will lose any right to object to the presence of Onerous Conditions in that Planning Permission or Planning Agreement, as the case may be.
- 5.6 Under this paragraph 5 the Council and the Developer agree that the Developer may object only to conditions which are Onerous Conditions.

6. Appeals and Planning Proceedings

6.1 Following a Planning Refusal:

- 6.1.1 the Developer is not to Appeal or commence Planning Proceedings except in accordance with this paragraph 6;
- 6.1.2 the Developer and the Council are to instruct Planning Counsel to advise on whether an Appeal or Planning Proceedings would stand a greater than 50% chance of resulting in the grant of a Satisfactory Hybrid Planning Permission; and
- 6.1.3 if Planning Counsel advises that there would be a greater than 50% chance of obtaining Satisfactory Hybrid Planning Permission on an Appeal or following Planning Proceedings ("Counsel Test"), the Developer is to Appeal or commence Planning Proceedings depending upon Planning Counsel's advice as to which option maximises the chances of obtaining Satisfactory Hybrid Planning Permission. If it is decided that an Appeal or Planning Proceedings is to be progressed then the parties agree that either party can (at its own request and cost) require the Counsel Test at any stage throughout such Appeal or Planning Proceedings to ascertain whether the Appeal or Planning Proceedings should be continued.

6.2 If the Developer makes an Appeal or commences Planning Proceedings it is to:

- 6.2.1 prosecute the Appeal or Planning Proceedings with all due diligence and in a good and efficient manner;

- 6.2.2 continue the Appeal or Planning Proceedings to their conclusion unless the Council otherwise approves which it will on request from the Developer where on a Counsel test the chances of success are 50% or less;
- 6.2.3 keep the Council and its planning consultants informed on the progress of the Appeal or Planning Proceedings including all correspondence, notifications, instructions to and advice of counsel, evidence of expert and other witnesses and the dates of any inquiry, hearing or for the submission of written representations; and
- 6.2.4 allow the Council and its planning consultants to attend at conferences with counsel and other relevant meetings.
- 6.2.5 If it is decided that an Appeal or Planning Proceedings is to be progressed then the parties agree that either party can (at its own request and cost) require the Counsel Test at any stage throughout such Appeal or Planning Proceedings to ascertain whether the Appeal or Planning Proceedings should be continued.

7. Termination

- 7.1 Either the Council or the Developer may end this Agreement by serving written notice on the other if in relation to a Hybrid Planning Application:
 - 7.1.1 Planning Permission is refused, unless that refusal is a deemed refusal arising from the failure of the local planning authority to determine a Planning Application within the time limits required under section 78(2) of the Planning Act;
 - 7.1.2 Planning Permission is granted subject to one or more Onerous Conditions which are unacceptable to the Developer or any Planning Agreement in respect of the Planning Permission contains such conditions and in either case the Developer has not begun a Planning Appeal within two months of the date of the Planning Permission;

PART 3: PLOT PLANNING PERMISSION

1. Obtaining Satisfactory Plot Planning Permission

- 1.1 In accordance with the relevant Plot Implementation Plan the Developer is to provide the relevant Plot Planning Application to the Council for its approval (not to be unreasonably withheld or delayed (provided it shall be deemed reasonable for the Council to withhold its consent where the Plot Planning Application is not in accordance with the Business Plan)) so as to enable the Plot Planning Application to be made on or before the relevant Milestone Dates and the

- 1.5.3.2 if the Appeal or Planning Proceedings result in a Planning Refusal, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with paragraph 1.5.2;
 - 1.5.4 if Planning Proceedings are begun by a third party during a Challenge Period, to the date ten Working Days after all Planning Proceedings have been determined or discontinued; and
 - 1.5.5 if an application is made to Planning Counsel or a Specialist under this Schedule, to the date eight weeks after the Developer receives written notice of his determination.
 - 2. The Plot Planning Application
 - 2.1 Any Plot Planning Application is to be submitted in the sole name of the Developer.
 - 2.2 The Developer may submit a Plot Planning Application in duplicate.
 - 2.3 The Plot Planning Application for each Plot shall be an application for approval of reserved matters for the relevant Plot pursuant to the Satisfactory Hybrid Planning Permission and the Developer may not make a Planning Application for a further Plot Planning Permission save where otherwise agreed with the Council (acting reasonably).
 - 2.4 The Council will not be obliged to approve a Plot Planning Application for a Plot unless it has also approved (acting reasonably) the Employment and Skills Plan for the relevant Plot.
 - 2.5 The Developer:
 - 2.5.1 is to submit a Planning Application for each relevant Plot to the local planning authority on or before the relevant Milestone;
 - 2.5.2 may, with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed (and subject to clause 2.4):
 - 2.5.2.1 amend any Plot Planning Application made to the local planning authority; or
 - 2.5.2.2 withdraw a Plot Planning Application and immediately submit a fresh Plot Planning Application
- in each case where it is reasonable to do so in order to obtain Satisfactory Plot Planning Permission; and

- 2.5.3 may agree with the local planning authority any extension to the statutory period not exceeding six months unless a longer period is approved by the Council for determining the Plot Planning Application under section 78(2) of the Planning Act.
- 2.6 The Developer may enter into negotiations or discussions with the local planning authority to facilitate the grant of Planning Permission but will not enter into any agreement with the local planning authority without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.
- 2.7 The Developer is to:
- 2.7.1 provide to the Council a copy of each Plot Planning Application made to the local planning authority;
 - 2.7.2 keep the Council informed at reasonable intervals, but not more than once in each calendar month, of the progress of each Plot Planning Application, amendments made to each Plot Planning Application, each withdrawal of a Plot Planning Application and details of all discussions and negotiations with the local planning authority;
 - 2.7.3 give the Council reasonable prior notice of any meetings with the local planning authority and allow the Council and its planning consultants to attend those meetings; and
 - 2.7.4 provide the Council with copies of all material correspondence, documents and minutes of meetings concerning the Plot Planning Application.
- 2.8 The Council is to co-operate with the Developer and use all reasonable endeavours to assist the Developer to obtain Satisfactory Plot Planning Permission.
3. Planning Agreements
- 3.1 The Developer is to enter into any Planning Agreement required by the local planning authority as a pre-condition of the grant of Planning Permission pursuant to a Plot Planning Application subject to the following conditions being satisfied:
- 3.1.1 the Developer is to pay the proper and reasonable legal fees and other costs, expenses and liabilities incurred by the Council in approving the terms of the Planning Agreement;
 - 3.1.2 the Planning Agreement does not contain terms which:

- 3.1.2.1 take effect before the date of the implementation of the Planning Permission, save in respect of payment of legal costs; or
 - 3.1.2.2 are Onerous Conditions, unless waived in accordance with this Schedule; or
 - 3.1.2.3 require the Council to be party to the Planning Agreement save as the local planning authority;
 - 3.1.3 the Planning Agreement is to be conditional on the Development being implemented;
 - 3.1.4 the Planning Agreement is to contain terms that release the Council absolutely from all liability under the Planning Agreement from the relevant Date of Actual Completion; and
 - 3.1.5 the Planning Agreement is in a form approved by the Council, such approval not to be unreasonably withheld or delayed when the requirements of this paragraph 3 are met.
- 3.2 Notwithstanding paragraph 3.1:
 - 3.2.1 to the extent that any Planning Agreement contains terms that take effect before the Date of Actual Completion of the first Plot to which the relevant Planning Permission relates, the Developer is to indemnify the Council on a full indemnity basis against all proper and reasonable legal fees and other costs, expenses and liabilities incurred in complying with those terms where the Council is required to do so by the local planning authority; and
 - 3.2.2 to the extent that any Planning Agreement imposes continuing liability on the Council after the Date of Actual Completion of the first Plot to be drawdown, the Developer is in the Plot Lease, or in any other document which the Council may reasonably require, to indemnify the Council on a full indemnity basis against all actions, claims, demands and proceedings taken or made against the Council and all costs, damages, expenses, liabilities and losses incurred by the Council arising from any breach of that Planning Agreement by the Developer or the Developer's successors in title to that part of the Development Area.
- 4. Planning Decisions
 - 4.1 The Developer is to notify the Council of each Planning Decision relating to a Plot Planning Application and provide a copy of the Planning Decision to the Council

not later than ten Working Days after notice of the Planning Decision has been given to the Developer.

4.2 If there is a Planning Refusal relating to a Plot Planning Application, the Developer is to notify the Council in writing within four weeks after the date of the Planning Refusal whether it wishes to make an Appeal or commence Planning Proceedings in respect of that Planning Refusal.

4.3 Within ten Working Days of receipt of the Planning Permission relating to a Plot Planning Application and any related Planning Agreement the Developer is to notify the Council in writing whether it considers that they contain Onerous Conditions which are unacceptable to the Developer and:

4.3.1 if the Developer does not do so, the Council may serve written notice on the Developer requiring the Developer to comply with this paragraph 4.3; and

4.3.2 if the Developer does not respond within two weeks of a notice served under paragraph 4.3.1, the relevant Planning Permission and any Planning Agreement, as the case may be, are to be treated as not containing Onerous Conditions.

4.4 If the Developer serves notice under paragraph 4.3 that the Plot Planning Permission or any related Planning Agreement contains one or more Onerous Conditions the Council may serve notice on the Developer within twenty Working Days of the date of Developer's notice, requiring the question of whether the Planning Permission or the Planning Agreement, as the case may be, contains Onerous Conditions to be determined by a Specialist in accordance with clause 14

4.5 The Developer may waive its right to object to the terms of the Planning Permission or any related Planning Agreement because of the presence of an Onerous Condition by serving written notice to this effect on the Council and on the service of notice under this paragraph 4.5 the Developer will lose any right to object to the presence of Onerous Conditions in that Planning Permission or Planning Agreement, as the case may be.

4.6 The Developer and the Council agree that the Developer may object only to conditions which are Onerous Conditions.

5. Appeals and Planning Proceedings

5.1 Following a Planning Refusal:

5.1.1 the Developer is not to Appeal or commence Planning Proceedings except in accordance with this paragraph 5;

- 5.1.2 the Developer and the Council are to instruct Planning Counsel to advise on whether an Appeal or Planning Proceedings would stand a greater than 50% chance of resulting in the grant of a Satisfactory Plot Planning Permission; and
 - 5.1.3 if Planning Counsel advises that there would be a greater than 50% chance of obtaining Satisfactory Plot Planning Permission on an Appeal or following Planning Proceedings ("Counsel Test"), the Developer is to Appeal or commence Planning Proceedings depending upon Planning Counsel's advice as to which option maximises the chances of obtaining Satisfactory Plot Planning Permission. If it is decided that an Appeal or Planning Proceedings is to be progressed then the parties agree that either party can (at its own request and cost) require the Counsel Test at any stage throughout such Appeal or Planning Proceedings to ascertain whether the Appeal or Planning Proceedings should be continued.
- 5.2 If the Developer makes an Appeal or commences Planning Proceedings it is to:
- 5.2.1 prosecute the Appeal or Planning Proceedings with all due diligence and in a good and efficient manner;
 - 5.2.2 continue the Appeal or Planning Proceedings to their conclusion unless the Council otherwise approves which it shall do on request from the Developer where a Counsel Test indicates the chances of success of the Appeal/ Planning Proceedings are 50% or less;
 - 5.2.3 keep the Council and its planning consultants informed on the progress of the Appeal or Planning Proceedings including all correspondence, notifications, instructions to and advice of counsel, evidence of expert and other witnesses and the dates of any inquiry, hearing or for the submission of written representations; and
 - 5.2.4 allow the Council and its planning consultants to attend at conferences with counsel and other relevant meetings.
 - 5.2.5 If it is decided that an Appeal or Planning Proceedings is to be progressed then the parties agree that either party can (at its own request and cost) require the Counsel Test at any stage throughout such Appeal or Planning Proceedings to ascertain whether the Appeal or Planning Proceedings should be continued.

PART 4- ONEROUS CONDITIONS

1. Onerous Conditions

1.1 An Onerous Condition is a condition which:

- 1.1.1 makes the Planning Permission personal to the Developer or to any specific person or class of persons;
- 1.1.2 makes the Planning Permission limited in time;
- 1.1.3 imposes time limits within which the Development must be commenced or applications for approval of reserved matters must be made which are more restrictive than those set out in sections 91 and 92 of the Planning Act;
- 1.1.4 requires the implementation of works on land not owned either the Developer or the Council; and
- 1.1.5 does not permit the First Development Site to have more than 2,700 Habitable Rooms (save that the Developer is required to Appeal if this particular Onerous Condition is triggered).

SCHEDULE 9

Vacant Possession Condition and Re-Housing Specification

1. Vacant Possession Condition
 - 1.1 For any Relevant Plot the Council is not obliged to comply with its obligations in relation to the Vacant Possession Condition:
 - 1.1.1 until the Relevant Plot is agreed or determined to be Viable pursuant to a Viability Test carried out pursuant to Schedule 6; and
 - 1.1.2 until the Parties have approved the Plot Implementation Plan for the Relevant Plot; and
 - 1.1.3 where the Developer is in breach of the re-housing specification set out in Section 4 of the Business Plan ("the Re-Housing Specification") and/or its obligations in this Agreement in relation to any other Plot or Sub-Plot; and
 - 1.1.4 until the preceding requirements of this paragraph 1.1 have been satisfied and Developer has confirmed to the Council that it requires the Vacant Possession Condition to be satisfied.
 - 1.2 Subject to paragraph 1.1 the Council is to use reasonable endeavours to procure vacant possession of the First Development Site as soon as reasonably practicable.
 - 1.3 Subject to paragraphs 1.1 and 1.4 the parties are to seek to satisfy the Vacant Possession Condition for the remaining Plots.
 - 1.4 Save for the First Development Site, the Council will seek to secure funding to enable the acquisition of the Outstanding Interests for each of the Relevant Plots so as to enable the Milestone Dates and Longstop Dates to be achieved in accordance with the Implementation Strategy (but for the avoidance of doubt the Council does not warrant such funding will be available).
 - 1.5 The Developer will satisfy the Re-Housing Specification to enable the satisfaction of the Vacant Possession Condition for each Plot.
 - 1.6 Where the Re-Housing Specification has been satisfied by the Developer the Council will use reasonable endeavours to provide up to (two hundred) 200 Affordable Residential Units as additional Off-Site Units per annum in accordance with the Implementation Strategy.
 - 1.7 In complying with:

- 1.7.1 its obligations in this Schedule and
- 1.7.2 in relation to the Re-Housing Specification the Developer will act in good faith and on an open book basis, and will promptly (and in any event within ten Working Days of written request) provide such information as the Council reasonably requires so that the Council can satisfy itself that the Developer is complying with its obligations in this Schedule.
- 1.8 The Developer will provide an update as to progress in relation to the Re-Housing Specification at each Steering Group Meeting.
- 1.9 Without limiting either parties obligations in this Schedule the parties shall co-operate to secure where reasonably practicable the extinguishment of Third Party Interests (without being obliged to pay consideration).
- 2. Rights of Light and Third Party Interests
 - 2.1 The Developer is to as soon as reasonably practicable to procure that the Rights of Light Surveyor produces a Rights of Light Report for a Relevant Plot and is to provide this to the Council within 5 Working Days of receipt of the Rights of Light Report for the Relevant Plot by the Developer.
 - 2.2 Where Injunctable Claimants are identified by the Rights of Light Report for a Relevant Plot or any Third Party Interests are identified by either Party in relation to a Plot the Developer is to provide the Council at the same time as the Rights of Light Report the Third Party Interests Indemnity Agreement to the Council for the Relevant Plot duly executed by the Developer with confirmation from the Developer that the Council is authorised to complete such Third Party Interests Indemnity Agreement.
 - 2.3 Where a Third Party Interests Indemnity Agreement is provided by the Developer to the Council, the Council will (acting reasonably) determine whether the rights of light enjoyed by the identified Injunctable Claimants can be properly and lawfully included in any CPO for the Plot or alternatively whether Appropriation Powers can be properly and lawfully used to ensure the Development can proceed notwithstanding the Injunctable Claimants.
 - 2.4 Whether the Council includes any identified Injunctable Claimants in a CPO or uses Appropriation Powers in relation to such Injunctable Claimants is a decision for the Council in its absolute discretion, but the Developer is not to be obliged to draw down a Plot where there are Injunctable Claimants which are neither subject to a CPO or Appropriation Powers nor otherwise extinguished (unless the Parties otherwise agree).

3. Compulsory Purchase

3.1 The Council confirms that subject to:

- 3.1.1 there being a compelling case in the public interest for the use of its CPO relevant powers, and
- 3.1.2 save for the First Development Site, it securing sufficient funding to fund the relevant CPO, it is where necessary and reasonable to do so willing to use CPO powers and/or Appropriation Powers to assist in the satisfaction of the Vacant Possession Condition for a Relevant Plot.

3.2 Subject to paragraph 3.1 above any CPO for any part of the Development Area is to be progressed by the Council at the appropriate time determined by the Council at its discretion acting reasonably and in accordance with the Implementation Strategy, taking into account:

- 3.2.1 the progress of achieving Vacant Possession at the Relevant Plot;
- 3.2.2 the requirements of making an effective CPO; and
- 3.2.3 the stage and progress of the Development of the Development Area against the Milestone Dates and Longstop Dates.

3.3 The Parties agree that:

- 3.3.1 the timings and extent of the CPOs to be undertaken will be determined in accordance with the Implementation Strategy, the Plot Plan and the Phasing Schedule.
- 3.3.2 a CPO may include additional land not comprised within the next Plot to be developed, but for at least the first two CPOs to be made at the Development Area any land subject to CPO should already be subject to a Satisfactory Plot Planning Permission and the Satisfactory Hybrid Planning Permission.

3.4 After the first two CPOs the parties will act in good faith in re-assessing whether a Satisfactory Plot Planning Permission is required before the Council will seek to use its CPO Powers (but the Council's decision will be final in the case of a dispute).

3.5 If there is any dispute or disagreement in relation to this Schedule this may be referred to the Steering Group but the Council's decision as to whether to make a CPO remains with the Council as planning authority and its decision cannot be fettered.

- 3.6 The Council is not to be obliged to make an Appropriation or CPO until it has authority from its cabinet.
- 3.7 The Council will not make an Appropriation or CPO until it is satisfied its requirements set out at paragraph 3.8 below have been met.
- 3.8 The Council will (unless it agrees in its absolute discretion otherwise) not consider using its Appropriation Powers or CPO powers to make an Appropriation or CPO:
- 3.8.1 unless the Council can evidence it has been seeking to re-house tenants and leaseholders for at least 18 months prior to the making of the Appropriation or CPO (for the avoidance of doubt this does not include non-resident leaseholders of existing dwellings at the Development Area);
 - 3.8.2 the Developer has made available (or has procured are made available) the required number of Affordable Residential Units as required by the Re-Housing Specification;
 - 3.8.3 the Plot Final Viability Condition and Funding Condition for any Plot included within the Appropriation and/or CPO have both been satisfied;
 - 3.8.4 a Satisfactory Plot Planning Permission has been obtained for such part of the Development Area to be subject to the Appropriation and/or CPO as is agreed by the Council and the Satisfactory Hybrid Planning Permission has been obtained;
 - 3.8.5 for any CPO, save in respect of the First Development Site, the Council is satisfied there are sufficient funds available to cover the costs and fees of the CPO (and any compensation arising) (or alternatively the Developer provides a full indemnity to cover the costs of making the CPO and all liability arising under it with the Developer entering into a CPO Indemnity Agreement with the Council as required on terms satisfactory to the Council(acting reasonably));
 - 3.8.6 where Third Party Interests are identified for any Plot the Developer provides a full indemnity to cover the proper costs of making the Appropriation (or CPO so far as it relates to the Third Party Interests) and all liability arising under it with the Developer entering into a Third Party Interests Indemnity Agreement with the Council as required on terms satisfactory to the Council acting reasonably);
- 3.9 For the avoidance of doubt, the Council is not to be obliged to make any general vesting order or notice to treat or take any action to implement the CPO until all

Conditions Precedent and other Plot Conditions for the Relevant Plot(s) have been satisfied.

3.10 If the Council makes an Appropriation or CPO for a Plot or Sub-Plot and the Developer subsequently fails to complete Plot Lease or Sub-Plot Lease in accordance with the requirements of this Agreement solely due to its default (such breach being an Event of Default) the Developer will indemnify the Council for its proper and reasonable costs in making the Appropriation and/or CPO up to a maximum of the "Appropriation/ CPO Indemnity Limit" as defined by paragraph 3.11 below

3.11 The Appropriation/ CPO Indemnity Limit is to be calculated by reference to the following formula:

$$P = £200,000 \times (A / B)$$

Where:

A = the Index last published before the relevant Event of Default; and

B = the Index last published before the date of this Agreement.

3.11.1 If the reference base used to compile the Index changes after the date of this Agreement, the Index published for the month in which the relevant Event of Default occurs is to be adjusted to give the figure which would have been shown as the Index if the reference base current at the date of this Agreement had been retained.

3.11.2 If the method of calculating the Index changes substantially after the date of this Agreement, the Index published for the month in which the relevant Event of Default is to be adjusted to give the figure which would have been shown by the Index if the method for calculating the Index last published before the date of this Agreement had not been changed.

3.11.3 If the Index ceases to be published, the Council and the Developer are to use all reasonable endeavours to agree an alternative index reflecting changes in consumer prices to use for the purposes of calculating the Price.

3.11.4 If the Appropriation/ CPO Limit agreed or determined under this clause is less than two hundred thousand pounds (£200,000), the Appropriation/ CPO Limit is to be two hundred thousand pounds.

3.12 The Developer is at its own cost to provide all assistance reasonably required by the Council in relation to the CPO and/or the use of Appropriation Powers, including (but not limited to) the provision of any information required for the

progression of the CPO and/or Appropriation (including providing a) witnesses to report the cost for the CPO at any CPO inquiry, and the progression of any Planning Applications in relation to the Development Area, and b) assistance with re-housing of leaseholders/ tenants who are subject to a proposed CPO (pursuant to the Re-Housing Specification)).

SCHEDULE 10

Demolition Condition

The following words and phrases have the following meanings in this Schedule:-

"Appointing Party"	for the First Development Site the Developer and for all other Plots the party responsible for the carrying out of the Demolition Works for a Plot, as determined by paragraphs 3.3 and 4.2 of this Schedule
"Demolition Contract"	the contract or contracts for the carrying out of the Demolition Works in a form agreed by the Parties (acting reasonably) in accordance with this Schedule 10 and which will for the avoidance of doubt be entered into as a deed
"Demolition Contractor"	such reputable demolition contractor as is appointed as the contractor for the purposes of the Demolition Works in accordance with this Schedule 10
"Demolition Programme"	the programme for the Demolition Works for any Relevant Plot as determined pursuant to paragraph 8 of this Schedule
"Demolition Specification"	the specification for any Demolition Works
"Demolition Works"	the Demolition Works to be carried out on a Relevant Plot for Above Ground Demolition in accordance with the Demolition Specification
"Demolition Works Practical Completion Certificate"	the certificate certifying the practical completion of the Demolition Works pursuant to the Demolition Contract

1. Demolition Specification

Subject to paragraphs 2 and 4 below, as soon as reasonably practicable for any Relevant Plot (having regard to the estimated date of satisfaction of the Vacant Possession Condition and the status of the other Plot Conditions) the Appointing Party (as determined by this Schedule) is to procure the preparation of the Demolition Specification.

2. Demolition Funding

- 2.1** The obligations at paragraph 1 are for each Relevant Plot (save for the First Development Site) conditional on the Council being satisfied that it has sufficient funding to fund the satisfaction of the Demolition Condition for the Relevant Plot ("the Plot Demolition Funding").
- 2.2** For any Relevant Plot the Council will notify the Developer as soon as reasonably practicable when it has Plot Demolition Funding and will keep the Developer informed as to progress in relation to securing the Plot Demolition Funding.
- 2.3** The Council will not be obliged to let the Demolition Contract until the other Plot Conditions have been satisfied (save for the Plot Final Viability Condition) and an Interim Viability Assessment Test has been carried out pursuant to paragraph 2 of Schedule 6 showing the Relevant Plot to be Viable.
- 2.4** It is acknowledged that for the First Development Site the Demolition Condition is waived and the Developer is to carry out the Demolition Works for the First Development Site in accordance with paragraph 4 below and the Developer is accordingly the Appointing Party for the First Development Site.

3. Demolition Condition

- 3.1** Subject to paragraph 2 and paragraph 4, following the Vacant Possession Condition being satisfied for the Relevant Plot the Council shall use reasonable endeavours to procure the appointment of the Demolition Contractor so as to achieve the Above Ground Demolition of the existing buildings at the Relevant Plot in accordance with the Demolition Specification on or before the relevant Milestone Date.
- 3.2** The Council is to confirm in writing to the Developer the satisfaction of this Demolition Condition for the Relevant Plot (save where paragraph 4 applies in which case the Demolition Condition is to be deemed satisfied on the issue of written notice by the Council pursuant to paragraph 4.1).
- 3.3** Unless the Council chooses to require the Developer to carry out the Demolition Works in accordance with paragraph 4 the Council is to be the "Appointing Party" for the purposes of this Schedule.

4. Appointment of Developer

- 4.1** For any Relevant Plot the Council may elect to appoint the Developer to carry out or procure the carrying out of the Demolition Works by serving written notice on the Developer to such effect in which case the provisions of this paragraph 4 are to apply.

- 4.2 Where the Council serves notice on the Developer requiring the Developer to procure the appointment of the Demolition Contractor the Demolition Condition is to be deemed waived and the Developer is to procure the Developer's Principal Agent complies with the provisions of this Schedule and for the purposes of this Schedule is to be the "Appointing Party".
- 4.3 Where the Council appoints the Developer to procure the Demolition Works for a Relevant Plot, the Developer is to procure :
- 4.3.1 the Developer's Principal Agent uses reasonable endeavours to procure the carrying out of the Demolition Works as soon as reasonably practicable, whilst mitigating any Demolition Costs so far as reasonable practicable;
 - 4.3.2 the preparation of the Demolition Specification and provide such specification to the Council for approval (such approval not to be unreasonably withheld or delayed);
 - 4.3.3 the appointment by way of a fixed price contract of a Demolition Contractor the identity of whom is approved by the Council (acting reasonably) and the appointment of whom is on terms approved by the Council (acting reasonably) to carry out the Demolition Works for the Relevant Plot in accordance with the agreed Demolition Specification by a competitive process in accordance with the requirements of the Business Plan, having regard to obtaining value for money, such obligations to include (but are not limited to):
 - 4.3.3.1 undertaking appropriate surveys and investigations to ensure that tenderers can be suitably informed as to the scope of the works and any risk areas such as asbestos;
 - 4.3.3.2 appropriately defining the requirements in terms of site establishment, preliminaries and CDM matters;
 - 4.3.3.3 shortlisting appropriately qualified and experienced demolition contractors with the capacity to deliver the works within the required timescales;
 - 4.3.3.4 issuing tender documents to a suitable number of demolition contractors, ensuring at least five tenders are returned; and
 - 4.3.3.5 where the tenders also include works which are at the Developer's or Developer's Principal Agent's cost (for example Below Ground Demolition) defining these

sufficiently such that the returned tenders clearly indicate costs that are the Council's responsibility;

4.3.4 as soon as reasonably practicable after approval by the Council of the form of the Demolition Contract to enter into the Demolition Contract with the Demolition Contractor.

4.4 Where this paragraph 4 applies any costs incurred by the Developer are to be treated as Development Costs.

5. Basis of Appointments

5.1 The appointment of the Demolition Contractor is to be made in accordance with the procedure set out in this Schedule.

5.2 Before appointing any Demolition Contractor the Appointing Party is to make due enquiry as to their repute, competence and suitability with respect to the Demolition Works.

6. Terms of Demolition Contract

6.1 The Demolition Contract is to be executed as a deed in a form approved by the Council and the Developer, such approvals not to be unreasonably withheld or delayed.

6.2 The Appointing Party is to provide the other with a certified copy of the Demolition Contract as soon as reasonably practicable after the same have been entered into.

6.3 The Appointing Party is to require the Demolition Contractor to provide a warranty for the Demolition Works to the other party to this agreement in a form approved by the relevant party (acting reasonably) and the Appointing Party is to procure the provision of such a warranty from the Demolition Contractor as soon as reasonably practicable after the appointment of the Demolition Contractor.

6.4 If the Developer or Developer's Principal Agent is Appointing Party the delivery of the warranty referred to in the previous paragraph shall be a pre-condition to payment or release of the 2.00% management fee referred to at paragraph 5.1.4 of Schedule 5.

7. Insurance

The Demolition Contract is to require that public liability insurance is maintained throughout the period of the carrying out of the Demolition Works with reputable insurers by the Demolition Contractor for at least £10 million in respect of each claim that may be made.

8. Demolition Works Programme

8.1 Before commencement of the Demolition Works the Appointing Party is to produce and provide the other with a programme giving details of:

8.1.1 the date on which the Demolition Works will begin; and

8.1.2 the timetable for the carrying out of the Demolition Works and the date on which it is intended that Practical Completion will be achieved.

8.2 The Appointing Party may make changes to the programme referred to at paragraph 8.1 provided that such changes are consistent with paragraph 8.1 and the Appointing Party is to keep the other party apprised of the current programme from time to time or otherwise at the reasonable request.

9. Appointing Party's obligations

9.1 The Appointing Party is to use reasonable endeavours to procure that the Demolition Contractor complies with the terms of the Demolition Contract and is to procure that once commenced the Demolition Works are carried out and completed in accordance with:

9.1.1 the Demolition Works Specification;

9.1.2 any necessary Statutory Consents; and

9.1.3 all Statutory Requirements, including the CDM Regulations; and

9.1.4 the Demolition Works Programme.

10. CDM Regulations

10.1 By entering into this Agreement, the Appointing Party elects, for the purposes of regulation 8 of the CDM Regulations, to be treated as the only client in respect of the Demolition Works. The other party agrees to the Appointing Party's election to be treated as the only client.

10.2 The Appointing Party is to appoint the CDM Co-ordinator as the CDM Co-ordinator in accordance with regulation 14(1) of the CDM Regulations and the Demolition Works Building Contractor as the principal contractor for the Demolition Works in accordance with regulation 14(2) of the CDM Regulations.

11. Certificate of Practical Completion

The Appointing Party is to serve a copy of the Demolition Works Certificate of Practical Completion on the other as soon as reasonably practicable after the date of issue of such certificate.

12. Disputes

Any disputes in relation to the Demolition Condition are to be referred to an Specialist appointed in accordance with clause 14 of this Agreement.

13. Developer's Principal Agent

Where the Developer's Principal Agent is Appointing Party for any Demolition Works for the avoidance of doubt the Developer is to procure that the Appointing Party complies with its obligations pursuant to this Schedule.

SCHEDULE 11

Plot Implementation Plans

1. Preparation and approval of Plot Implementation Plans
 - 1.1 The Developer is for the Relevant Plot, within the time limits set out in the Phasing Schedule, and in any event within 10 Working Days of satisfaction of the Plot Final Viability Condition for the Plot and before the deadline for submission of the Plot Planning Application for the Relevant Plot in accordance with the Milestone Dates, Longstop Dates and the Phasing Schedule to finalise the Plot Implementation Plan for the First Development Site and to prepare the Plot Implementation Plan for each remaining Plot (excluding First Development Site) and provide it to the Council for the Council's approval.
 - 1.2 Each Plot Implementation Plan will include the information and details set out in paragraph 1.3 below and such additional information or detail as may be reasonably requested by the Council from time to time.
 - 1.3 Each Plot Implementation Plan shall be consistent in all material respects with the requirements of the Business Plan and will include:
 - 1.3.1 the draft Plot Planning Application for the Relevant Plot which must comply with the Satisfactory Hybrid Planning Permission (where this in place, and the Planning Application for the Hybrid Planning Permission where the Hybrid Planning Permission is not yet granted) and the Masterplan;
 - 1.3.2 the Sub-Plots proposed to form the Plot, to be in accordance with the Sub-Plot Requirements;
 - 1.3.3 details of the Infrastructure Works and any Remediation Works proposed to be undertaken on the Relevant Plot or in order to accommodate the development of the Relevant Plot (to be in compliance with the infrastructure requirements in the Design and Technical Strategy);
 - 1.3.4 the Developer's proposals for Residential Unit typology, tenure mix and unit size mix and for the mix, location and size of any Commercial Units within the Relevant Plot;
 - 1.3.5 details of any Stopping Up Order that is required for the Relevant Plot;
 - 1.3.6 the proposed Programme of Works for the Relevant Plot in accordance with paragraph 2 below which must be in material compliance with the

Phasing Schedule and to include dates for the commencement and completion of the Development Works on the Relevant Plot;

- 1.3.7 confirmation as to whether any Interim Uses are to be delivered by way of Interim Use Leases;
 - 1.3.8 plans showing the land to be comprised in the Building Lease, Plot Lease, Sub-Plot Leases, the Sub-Plot Underleases, any Council Lease, any Interim Use Lease and NASS Lease and the Developer's proposals for any amendments that are required to the form of Building Lease, Plot Lease and NASS Lease, Council Lease for the Relevant Plot in accordance with Schedule 12;
 - 1.3.9 a Viability Notice and a draft Financial Appraisal for the Relevant Plot prepared in accordance with Schedule 6; and
 - 1.3.10 a Plot Sales and Marketing Strategy for the Relevant Plot which shall be substantially in the form of the "sales and lettings approach and agreed principles" contained in the Marketing, Communications and Involvement Strategy;
 - 1.3.11 detailed specifications and plans of any Council's Works and Council Leases to be granted in relation to the Relevant Plot in accordance with the requirements of the Business Plan; and
 - 1.3.12 The Employment and Skills Plan for the Relevant Plot.
- 1.4 The Council is to confirm within 20 Working Days of submission of the relevant Plot Implementation Plan whether it approves the Plot Implementation Plan such approval not to be unreasonably withheld or delayed, and where it is not it is to give reasons.
- 1.5 Any dispute in relation to the Plot Implementation Plan may be referred to an Specialist (appointed in accordance with clause 14 of this Agreement) but where the proposed Plot Implementation Plan breaches the Minimum Requirements and/or the Council's requirements for the Council's Works, the Specialist is not permitted to determine the matter in dispute and the Change Procedure shall apply.
- 1.6 Once approved (or determined to be approved) by the Council no changes may be made to a Plot Implementation Plan unless otherwise expressly permitted by the terms of this Agreement.
- 1.7 The Developer is not to start the Development Works on a Plot until the Plot Implementation Plan for the Relevant Plot has been approved (or deemed approved) by the Council under this Schedule.

1.8 No inspection or approval by the Council of the Approved Plot Implementation Plan is to lessen the obligations of the Developer, the Building Contractor, any member of the Professional Team or any Principal Sub-Contractor in relation to the design and construction of the Development, whether under this Agreement or otherwise.

1.9 The Plot Implementation Plan for any Plot may be varied by the Steering Group from time to time.

2. Programme of Works

2.1 The Developer is to produce and provide the Council with a Programme of Works for the Relevant Plot for its approval in accordance with the Change Procedure giving details of:

2.1.1 the date on which the Development Works for the Relevant Plot will begin; and

2.1.2 the timetable for the carrying out of those Development Works showing the estimated duration of each stage of the Development Works and the date on which it is intended that Practical Completion will be achieved.

2.2 Once approved by the Council, the Developer is not to vary the Programme of Works except in accordance with paragraph 3 of Schedule 14.

2.3 The Developer is not to start the Development Works for any Relevant Plot until the Programme of Works has been approved by the Council.

SCHEDULE 12

Grant of Leases

PART 1: GENERAL PROVISIONS

1. Agreement for leases
- 1.1 Part 1 of the Commercial Conditions apply to the grant of each Building Lease Plot Lease, Sub-Plot Lease, NASS Lease, Council Lease, and Interim Use Lease so far as they are applicable and are consistent with the express terms of this Agreement but:
 - 1.1.1 Commercial Conditions 2.2, 2.3, 3.2, 3.3, 4, 5, 6.3, 7, and 11 do not apply;
 - 1.1.2 in Commercial Condition 1.3, all references to service by e-mail are deleted;
 - 1.1.3 Commercial Condition 1.4.1 reads "An obligation to pay money includes an obligation to pay any value added tax chargeable in respect of that payment."; and
 - 1.1.4 Commercial Condition 8.3.2 reads "Apportionment is to be made with effect from the date of actual completion."
- 1.2 Neither party will be under any obligation to complete a lease on a day that is not a Working Day or before 9:30 am or after 5:30 pm on a Working Day, even where time is of the essence for completion.
- 1.3 Grant of the Building Lease
 - 1.3.1 The Council agrees to grant and the Developer agrees to accept the grant of the Building Lease for the Relevant Plot on the date 20 Working Days after the Unconditional Date for that Plot.
 - 1.3.2 Any Building Lease is to be executed in duplicate and the Developer is to procure that the duplicate is returned to the Council's Solicitors as soon as possible after completion.
- 1.4 Any party that executes the Building Lease pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.
- 1.5 Plot Lease or Sub-Plot Lease

- 1.5.1 The Council agrees to grant and the Developer agrees to accept the grant of the Plot Lease or Sub-Plot Lease for the Relevant Plot on the Completion Date for that Plot or Sub-Plot (as applicable) and the parties agree immediately prior to the grant of the relevant Plot Lease or Sub-Plot Lease to terminate the Building Lease for the Relevant Plot only so far as it comprises the demise of the relevant Plot Lease or Sub-Plot Lease (as applicable) in accordance with the termination provisions in the Building Lease.
- 1.5.2 For the avoidance of doubt the Plot Lease or Sub-Plot Lease (as the context requires) will not grant or reserve any rights or easements or other encumbrances or permit any other thing to be done which would adversely affect the Development of any other Plot or Non-Adopted Shared Space not yet developed at the time of the relevant lease.
- 1.5.3 The Plot Lease or Sub-Plot Lease (as the context requires) is to be executed in duplicate and the Developer is to procure that the duplicate is returned to the Council's Solicitors as soon as possible after completion.
- 1.5.4 Any party that executes the Plot Lease pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.
- 1.5.5 Any Council Public Realm is to be excluded from the demise of any Plot Lease or Sub-Plot Lease.
- 1.5.6 Subject to any adjustments permitted by this Agreement, the relevant Premium for the Sub-Plots within the First Development Site to be inserted into the Sub-Plot Leases in the First Development Site is to be:
- 1.5.6.1 for the Sub-Plot 6 (as identified in the Plot Plan) the First Fixed Payment (as defined in Schedule 4);
- 1.5.6.2 for Sub-Plot 3 (as identified in the Plot Plan) is the Second Fixed Payment (as defined in Schedule 4);
- 1.5.6.3 for Sub-Plot 4 (as identified in the Plot Plan) the Third Fixed Payment (as defined in Schedule 4); and
- 1.5.6.4 for other Sub-Plots (as identified in the Plot Plan) a payment of £1.00 (one pound).

- 1.5.7 For Plots and Sub-Plots within Subsequent Plots the Premium for each Plot or Sub-Plot is to be calculated pursuant to paragraph 2.2 of Schedule 4.

1.6 Council Lease

- 1.6.1 Subject to paragraph 1.6.4 below, where there are any Council Works on any Plot the Developer is to grant and the Council is to accept the grant of the Council Lease on the Completion Date for the relevant Plot Lease (or where there are Sub-Plots within the Plot) the Sub-Plot Lease.
- 1.6.2 Any Council Lease is to be executed in duplicate and the Developer is to procure that the duplicate is returned to the Council's Solicitors as soon as possible after completion.
- 1.6.3 Any party that executes the Council Lease pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.
- 1.6.4 The Parties acknowledge that it is their shared intention to mitigate tax liability for the Development where sensible to do so, and both parties will act reasonably and in good faith in considering this requirement in the context of the Council Works, and where appropriate may seek to agree such reasonable changes to the structure of the property interests granted and retained in respect of any Council Works (which may entail the Council retaining the freehold of the Council Works) prior to the grant of any Council Lease.

1.7 NASS Lease

- 1.7.1 The Council agrees to grant and the Developer agrees to procure the NASS Manager accepts the grant of the NASS Lease for the Relevant Plot on the Completion Date for the Relevant Plot and the parties agree immediately prior to the grant of the relevant NASS Lease to surrender or otherwise terminate such part of the Building Lease for the Relevant Plot as includes the demise of the NASS Lease.
- 1.7.2 Any NASS Lease is to be substantially on the terms set out in the heads of terms included in the Specification in Section 10 of the Business Plan with such amendments to the rights granted and reserved and with such restrictive and positive covenants as the Council and the Developer may reasonably require having regard to the layout of the Development and the Non-Adopted Shared Space on the Relevant Plot, the location of the Relevant Plot within the

Development Area and any rights and reservations required for the beneficial use and enjoyment of the Relevant Plot and any land out of which the Relevant Plot is transferred.

- 1.7.3 The Council is to instruct their solicitors to prepare the draft NASS Lease for a Relevant Plot for approval by the Developer as soon as reasonably practicable after the agreement or determination of the Plot Implementation Plan (if not earlier).
- 1.7.4 For the avoidance of doubt the NASS Lease will not grant or reserve any rights or easements or other encumbrances or permit any other thing to be done which would adversely affect the Development of any other Plot (including any Non-Adopted Shared Space) not yet developed at the time of completion the relevant lease.
- 1.7.5 The NASS Lease is to be executed in duplicate and the Developer is to procure that the NASS Manager returns the duplicate to the Council's Solicitors as soon as possible after completion.
- 1.7.6 Any party that executes the NASS Lease pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.
- 1.7.7 If the NASS Manager fails to comply with its obligation to enter into the NASS Lease, the Developer is to be obliged to enter into the NASS Lease in place of the NASS Manager.

1.8 Interim Use Lease

- 1.8.1 Where the Unconditional Date has not arisen on a Plot and it is agreed by the parties that an Interim Use Lease is to be granted to an agreed occupier pursuant to the Implementation Strategy the Council agrees to grant, and the Developer agrees to accept the grant of an Interim Use Lease for the part of a Relevant Plot on the date agreed by Council and the Developer pursuant to the Implementation Strategy and the Developer is to simultaneously grant an underlease on materially the same terms as the Interim Use Lease to the agreed occupier (such underlease to be prepared by the Developer and approved by the Council (acting reasonably)).
- 1.8.2 Where the Unconditional Date has arisen on a Plot and it is agreed by the parties that an Interim Use Lease is to be granted to an agreed occupier pursuant to the Implementation Strategy, the Developer agrees to grant an underlease in materially the form of the Interim Use

Lease to the agreed occupier on the date agreed by Council and the Developer pursuant to the Implementation Strategy.

- 1.8.3 For any Plot where it is agreed that there is to be an Interim Lease the Developer's Solicitors are to prepare a draft for the Council's approval (not to be unreasonably withheld or delayed) as soon as reasonably practicable after the heads of terms for such Interim Lease are agreed.
- 1.8.4 For the avoidance of doubt the Interim Lease will not grant or reserve any rights or easements or other encumbrances or permit any other thing to be done which would adversely affect the Development of any Plot (including any Non-Adopted Shared Space) not yet developed at the time of the relevant lease.
- 1.8.5 Any Interim Use Lease is to be executed in duplicate and the Developer is to procure that the duplicate is returned to the Council's Solicitors as soon as possible after completion.
- 1.8.6 Any party that executes a Interim Use Lease pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.

1.9 Issue of lease engrossments

Subject to the leases being approved the Council is to use reasonable endeavours to procure the issue of engrossments of (as applicable) each Building Lease, Plot Lease, Interim Use Lease, or Council Lease to the Developer and in the case of the NASS Lease to the NASS Manager ten Working Days prior to the proposed completion date for such leases set out above.

2. Title

- 2.1 The Council has deduced to the Developer title to the Development Area and the Developer is not entitled to raise any requisition or objection to the title except in respect of any matters registered against the Council's titles after the date of this Agreement.
- 2.2 The Developer is not entitled to raise any requisitions or objection to the Council's title to the Development Area.

3. Title Matters

- 3.1 The Relevant Plot (and any part thereof) is let subject to and, to the extent that the Council (and in the case of any Council Lease, the Developer) is able to transfer them, with the benefit of the Title Matters.

3.2 The Developer's Solicitors have been provided with copies of the Title Matters and the Developer and NASS Manager are to be treated as buying the Relevant Plot and Non-Adopted Shared Space with full knowledge of them and will not raise any requisition or objection to them.

3.3 The Relevant Plot or Non-Adopted Shared Space are let subject to:

3.3.1 the matters contained or referred to in Commercial Condition 3.1.2;

3.3.2 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Date of Actual Completion;

3.3.3 any notice, order or proposal given or made by a government department or by any public or local authority, statutory undertaker or other competent body or person;

3.3.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Relevant Plot or Non-Adopted Shared Space (as the case may be) and to any orders or regulations made under that or any other legislation;

3.3.5 all rates, charges and other outgoings which affect or are charged on the Relevant Plot except for any mortgage or legal charge relating to money secured on the Relevant Plot;

3.3.6 any unregistered interest that overrides the disposition effected pursuant to this Agreement under Schedules 1, 3 or 12 of the Land Registration Act 2002;

3.3.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Relevant Plot; and

3.3.8 all liability to repair and maintain roads, paths, conduits, fences and other like matters or to contribute to the cost of their repair and maintenance.

4. Land Registry Applications

4.1 The Developer is not to send this Agreement or any copy of it to the Land Registry and is not to protect the benefit of this Agreement at the Land Registry except by the registration of a unilateral notice. The Council agrees not to object to the registration of a unilateral notice.

4.2 The Developer is to use reasonable endeavours to register each Plot Lease and Sub-Plot Lease of the Relevant Plot at the Land Registry as soon as reasonably

practicable after the Date of Actual Completion and, on completion of that registration, is to provide the Council with official copies of the title to the Relevant Plot showing the Developer registered as proprietor together with any title plan produced or updated by the Land Registry as part of that registration.

4.3 As part of the Developer's application to register the Plot Lease or Sub-Plot Lease of the Relevant Plot at the Land Registry, the Developer is to:

4.3.1 request that the Land Registrar notes the benefit of any easements reserved by the Plot Lease or Sub-Plot Lease over the Development Area against the Title Number(s) for the Relevant Plot and against the Title Numbers for all those parts of the Development Area which at the date of the relevant Plot Lease or Sub-Plot Lease remain in the ownership of the Council; and

4.3.2 request that the Land Registrar notes the benefit of any easements granted by the Plot Lease or Sub-Plot Lease in favour of the Development Area against the title number to the Development Area allocated by the Land Registry.

PART 2: TITLE MATTERS

1. Register entries

The matters contained or referred to in the Property and Charges Registers of the Title Numbers as at the following dates and times:

Title number	Area covered	Date of Official Copies
TGL257197	Phase 1a (L&Q) First development site - 1b 1c (Bradenham, Chartridge, Arklow, Chiltern) Ellison House Extreme western end of Calverton	8 January 2014 15:52:17
TGL357041	Strip fronting Albany Road Calverton, Danesfield, Emberton	20 January 2014 09:37:39
TGL271277	Land behind the strip above. East of Portland Street, south of Michael Faraday School Gayhurst, Galtskell, Hambledon	20 January 2014 09:38:11
SGL22762	Land to the west of Thurlow Street, south of Michael Faraday House, to the east of the site above. Latimer	20 January 2014 09:43:14

TGL296169	Michael Faraday School. Soane House, part (1-43) Missenden. West of Portland Street	20 January 2014 09:46:37
TGL303136	44-255 Missenden, Lees House, Darvell House. Inville Road	20 January 2014 09:49:07
TGL303554	Inville Road, Missenden. Chadwell House, 300 - 311 Missenden and east to Thurlow St	20 January 2014 09:51:27
LN80809	Michael Faraday House, 256- 299 Missenden. South of Inville Road, West of Thurlow Street. Hour Glass pub.	20 January 2014 09:53:23
TGL304685	241 - 471 Wendover.	20 January 2014 09:58:41
TGL303855	Area to the east of southern part of Wendover. Ravenstone, Foxcote, Padbury, Winslow, Faversham House. Excludes 140 Albany Road	20 January 2014 10:00:37
TGL303941	Land adjoining 140 Albany Road	20 January 2014 10:02:35
TGL304566	37-72, 116-156 and 201-240 Wendover. 126-192 Wolverton. South of Alsace Road	20 January 2014 10:04:59
TGL304593	Brockley House, 85-125 Wolverton, part of the building forming 157-200 Wendover	20 January 2014 10:06:49
TGL19098	Includes Site 7. 60 - 84 Wolverton. 1 - 36 Wendover. South of East Street. Both sides of Thurlow Street. Northchurch, Taplow, includes health centre, Tykes Corner, Blue Hut. East of Dawes Street	19 December 2013 11:03:34
SGL12641	140 Albany Road (NB not owned by the Council)	22 January 2014 14:56:34
TGL80906	57 Inville Road (NB not owned by the Council)	25 March 2014 at 12:28:03
TGL8589	55 Inville Road (NB not owned by the Council)	25 March 2014 at 12:29:07
SGL441616	53 Inville Road (NB not owned by the Council)	25 March 2014 at 12:30:08

SGL438952	63 Inville Road (NB not owned by the Council)	25 March 2014 at 12:31:30
TGL49796	65 Inville Road (NB not owned by the Council)	25 March 2014 at 12:32:30

2. Other deeds and documents

The matters contained or referred to in the following deeds and documents:

Date	Document	Parties
	None	

SCHEDULE 13

Development Conditions

1. Statutory Consents

- 1.1 In accordance with the Plot Plan the Phasing Schedule and the Plot Implementation Plan for the Relevant Plot the Developer is to or is to procure the Developer's Principal Agent is to make applications for and use all reasonable endeavours to obtain the Statutory Consents for the Relevant Plot or obtain lawful relaxations or waivers of them.
- 1.2 The Developer is to (or is to procure the Developer's Principal Agent is to) keep the Council properly informed as to the progress of each application for the Statutory Consents and of all negotiations relating to those applications.
- 1.3 If any of the Statutory Consents are refused, the Developer is to (or is to procure the Developer's Principal Agent is to) appeal against the refusal and use all reasonable endeavours to obtain the relevant Statutory Consents.
- 1.4 The Developer is to or is to procure the Developer's Principal Agent is to provide copies of the Statutory Consents obtained to the Council.
- 1.5 The Developer is to (or is to procure the Developer's Principal Agent is to) procure that all Statutory Consents obtained remain valid and unrevoked and use reasonable endeavours to renew any that become invalid or revoked.

2. CDM Regulations

- 2.1 By entering into this Agreement, the Developer elects, for the purposes of regulation 8 of the CDM Regulations, to be treated as the only client in respect of the Development and the Development Works. The Council agrees to the Developer's election to be treated as the only client.
- 2.2 The Developer is to appoint the CDM Co-ordinator as the CDM Co-ordinator in accordance with regulation 14(1) of the CDM Regulations and the Building Contractor as the principal contractor for the Development Works in accordance with regulation 14(2) of the CDM Regulations.
- 2.3 The Developer is:
 - 2.3.1 to comply with its obligations as the client under the CDM Regulations;
 - 2.3.2 to procure that the persons appointed under paragraph 2.2 comply with their obligations under the CDM Regulations;

- 2.3.3 to procure that designers and contractors for the purposes of the CDM Regulations comply with their obligations in the CDM Regulations; and
- 2.3.4 in conjunction with the CDM Co-ordinator to procure that:
 - 2.3.4.1 full details of the Development Works for the Relevant Plot are given to the Health and Safety Executive in accordance with regulation 21 of the CDM Regulations; and
 - 2.3.4.2 a Construction Plot Plan is prepared for the Relevant Plot in accordance with regulation 23 of the CDM Regulations.
- 2.3.5 not to start the Development Works for the Relevant Plot until the provisions of this paragraph 2 have been complied with.

3. Code for Sustainable Homes

- 3.1 The Developer must obtain a Code for Sustainable Homes pre-assessment for all residential buildings within the Development to be built of at least "Level 4" and if no such standard is maintained then such suitable equivalent as the Developer proposes and the Council approves such approval not to be unreasonably withheld or delayed.
- 3.2 The Developer must obtain all such pre-assessments as soon as reasonably practical after satisfaction of the Development Conditions for the Plot comprising Residential Units and prior to the Commencement of such Development Works and pass a copy to the Council within 5 Working Days of receipt.

4. NHBC

Any development for residential use shall meet the standards and requirements of and be registered with the National House Building Council or any other insurer offering a similar product recognised from time to time by the Council of Mortgage Lenders prior to Commencement of the Development Works on the Relevant Plot.

SCHEDULE 14

Development Obligations

1. Carrying out the Development Works
 - 1.1 The Developer is to (or is to procure the Developer's Principal Agent is to) proceed diligently with and carry out and complete the Development Works for the Relevant Plot:
 - 1.1.1 in a good, proper and workmanlike manner, free from defects and using good quality and suitable materials; and
 - 1.1.2 in accordance with:
 - 1.1.2.1 the Business Plan and Approved Plot Implementation Plan;
 - 1.1.2.2 the Plot Plan, the Phasing Schedule and the Programme of Works for the Relevant Plot;
 - 1.1.2.3 the terms of the Building Contract;
 - 1.1.2.4 the Satisfactory Planning Permission;
 - 1.1.2.5 the Design Standards;
 - 1.1.2.6 the Statutory Consents;
 - 1.1.2.7 all Statutory Requirements, including the CDM Regulations;
 - 1.1.2.8 the Construction Plan for the Relevant Plot;
 - 1.1.2.9 the requirements, if any, of the insurers of the Development Area; and
 - 1.1.2.10 British and European standards and Good Industry Practice; and
 - 1.1.3 without using or specifying the use of any Prohibited Materials.
 - 1.2 Without prejudice to paragraph 1.1 and subject to paragraph 2, the Developer is to procure that the whole of the Development Works for First Development Site are carried out and completed by the Longstop Date for Practical Completion of the First Development Site as set out at Schedule 2. Time shall be of the essence for the purposes of this paragraph 1.2.

- 1.3 Without prejudice to paragraph 1.1 (and in the case of Milestone Dates only subject to paragraph 2), the Developer is to procure that the whole of the Development Works for each Relevant Plot (excluding First Development Site) are carried out in accordance with the Programme of Works for the Relevant Plot and completed by the relevant Milestone Dates and the Relevant Plot Longstop Dates for the Relevant Plot subject to extensions of time for Force Majeure.
- 1.4 The Developer is to procure the Commencement of the Development Works for each Plot no later than the Start Date for the Relevant Plot subject to extensions of time for Force Majeure.
- 1.5 In carrying out the Development Works on any Plot the Developer shall procure that:
- 1.5.1 no steps are taken nor any rights granted or incumbrances created which would materially adversely affect the development of any other Plot (this is not to be deemed to prevent the construction of reasonably required utilities, services, conduits, diversions, roads, paths, accessways or similar ("Rights") which may affect the whole or parts of the Development Area); and
 - 1.5.2 no part of the Development Works for a Plot is carried out or undertaken on any other Plot unless needed as part of the Rights for such Plot or as necessary for the carrying out of Infrastructure Works or Remediation Works which may be required to be carried out as a condition of any Statutory Consent or Planning Agreement for the Development Works.
- 1.6 The Developer is to procure that:
- 1.6.1 proper provision is made for the security of the Relevant Plot during the carrying out of the Development Works and for the protection of any materials, plant and equipment in or on it;
 - 1.6.2 proper precautions are taken for the safety of all persons upon or in the vicinity of the Relevant Plot including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Development Works as may be necessary or desirable in the interest of public safety;
 - 1.6.3 the Development Works are carried out in a manner which does not:
 - 1.6.3.1 so far as reasonable given the nature of the Development Works cause any nuisance, annoyance, inconvenience; and

- 1.6.3.2 cause any injury, loss or danger to or interference with the public or any owners or occupiers of adjoining or neighbouring property; and
 - 1.6.4 proper provision is made for the support of land, buildings and boundaries adjoining the Relevant Plot and for the protection of all services benefiting land adjoining or near to the Relevant Plot.
- 1.7 The Developer is to:
 - 1.7.1 (subject to paragraph 1.7.4 below) indemnify the Council against breach of interests of third parties by the carrying out of the Development Works ;
 - 1.7.2 indemnify the Council against breach of any agreements, deeds, documents, rights, easements, exceptions, reservations and covenants, restrictive or otherwise, affecting the Development Area or the title to it insofar as the same are still subsisting and capable of taking effect and not including those that are the subject of insurance;
 - 1.7.3 not permit any encroachment or easement to be made or acquired against or over the Development Area;
 - 1.7.4 so far as necessary negotiate where it determines appropriate the terms of agreements with owners and occupiers of neighbouring property for the release of rights of way, light and air or any other legal or equitable rights over the Development Area which would be infringed by the Development of the Relevant Plot or prevent or impede the carrying out of the Development Works for the Relevant Plot;
 - 1.7.5 apply for and use reasonable endeavours to obtain any orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the Development Works to be carried out.
- 2. Extensions of time
 - 2.1 If there is any delay in completing the Development Works for the Relevant Plot arising from:
 - 2.1.1 any default of the Building Contractor under the terms of the Building Contract;
 - 2.1.2 the Insolvency of the Building Contractor;

2.1.3 Force Majeure; or

2.1.4 any loss or damage caused by any of the Insured Risks

the Milestone Dates for the Relevant Plot are to be extended by such period as the Council's Agent certifies as being reasonable and proper in the light of the reasons for the delay subject to such extensions not exceeding any Longstop Date.

3. Variations

3.1 If any of the materials, plant or equipment required for the Development Works for the Relevant Plot cannot be obtained within a reasonable time or at a reasonable cost, the Developer will be entitled to use alternative materials, plant or equipment in their place so long as the alternative materials, plant or equipment are of no lesser quality than the materials, plant or equipment which they replace.

3.2 The Developer may make changes to the Approved Plot Implementation Plans without the consent of the Council where the changes do not breach the Minimum Requirements and/or do not relate to or detrimentally affect any Council Works and are required to comply with Statutory Requirements.

3.3 All other changes to the Approved Plot Implementation Plans will require the prior written consent of the Council in accordance with the Change Procedure.

3.4 The Council or Developer may not request changes to the Business Plan, Plot Plan, Phasing Schedule, the Plot Implementation Plans or the Development Works otherwise than in accordance with the Change Procedure at Schedule 1.

4. Inspection by the Council

4.1 During the carrying out of any Development Works, the Council, the Council's Agent and invitees may enter any relevant part of the Development Area to view the state and progress of the Development Works.

4.2 The Developer will provide the Council the Council's agent and invitees with such information as they reasonably require in respect of the Development Works in order to carry out their duties.

4.3 The Council and the Council's Agent will:

4.3.1 give reasonable prior notice to the Developer before exercising these rights unless prior arrangements have been made with the Developer for regular visits;

4.3.2 exercise the rights at reasonable times and at reasonable intervals;

- 4.3.3 be accompanied by the Developer's Agent if the Developer so requires;
- 4.3.4 comply with the reasonable requirements of the Building Contractor;
- 4.3.5 comply with any health and safety requirements in the Construction Plan; and
- 4.3.6 refer all matters arising to the Developer and not to the Building Contractor or its agents, workmen or sub-contractors.

5. Site Meetings

- 5.1 The Developer is to hold site meetings not less than once every month and procure that the Building Contractor, the Developer's Agent, any relevant members of the Professional Team and any relevant Principal Sub-Contractors attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Development Works.
- 5.2 The Developer is to:
 - 5.2.1 give the Council not less than five Working Days' written notice of any site meetings called under paragraph 5.1 unless it has been agreed that site meetings will be held at regular intervals on dates and at times agreed in advance;
 - 5.2.2 permit the Council and the Council's Agent, if they so desire, to attend and participate in those site meetings;
 - 5.2.3 permit the Council and the Council's Agent to make representations in connection with the Development Works; and
 - 5.2.4 supply the Council and the Council's Agent with copies of full minutes of the site meetings, whether or not they attend.
- 5.3 In respect of any representations made by the Council or the Council's Agent under paragraph 5.2:
 - 5.3.1 the Developer is to take proper account of them;
 - 5.3.2 the Developer is to procure that the members of the Professional Team, the Building Contractor and any Principal Sub-Contractors take proper account of those representations; and
 - 5.3.3 the Developer is to notify the Council and the Council's Agent of any observations made by the members of the Professional Team, the Building Contractor or the Principal Sub-Contractors on representations made by the Council or the Council's Agent.

6. Certificate of Practical Completion

- 6.1 The Developer is to procure that the Developer's Agent inspects the Development Works with a view to the issue of each Certificate of Practical Completion in accordance with the terms of the Building Contract. The Developer is to give the Council's Agent not less than ten Working Days' prior written notice of the date and time, being a Working Day during the hours of daylight, when the Developer's Agent will carry out this inspection.
- 6.2 The Council and the Council's Agent will be entitled to accompany the Developer's Agent on the inspection of the Development Works and to make representations on the proposal to issue each Certificate of Practical Completion and the Developer is to procure that the Developer's Agent takes proper account of any representations made by them.
- 6.3 If there are any defects in the Development Works, other than defects in the nature of minor snagging items which would not be an impediment to the issue of the Certificate of Practical Completion in accordance with the terms of the Building Contract, the Developer is to procure that the Developer's Agent does not issue the Certificate of Practical Completion until those defects have been made good.
- 6.4 The Developer is to serve a copy of the Certificate of Practical Completion on the Council and the Council's Agent as soon as reasonably practicable after the date of the inspection of the Development Works.
- 6.5 Subject to paragraph 6.3, the Certificate of Practical Completion once issued will be final and binding except in relation to any certificates relating to the Council Works and/or Council Public Realm and any Affordable Residential Units where the Council shall be able to challenge the issue of the Certificate of Practical Completion if it considers there are material outstanding construction issues (beyond normal snagging matters) such that the Developer will be responsible for making good such matters and where in such scenario the Developer's Agent is to re-inspect.

7. Following Practical Completion

- 7.1 As soon as reasonably practicable following Practical Completion, the Developer is to:
 - 7.1.1 procure that the Building Contractor carries out any further works that are required to make good any defects, omissions and snagging items identified in the Certificate of Practical Completion;
 - 7.1.2 carry out and complete in the next planting season any landscaping works which it was not possible to complete by the Date of Practical

Completion because of the planting season in which the Date of Practical Completion fell; and

- 7.1.3 procure that all defects in the Development Works for which the Building Contractor is responsible under the Building Contract that arise within the Liability Period are made good in accordance with the terms of the Building Contract.

8. Measurement of the Internal Area

- 8.1 The Developer and the Council are to co-operate for the purposes of agreeing the Internal Area as soon as the Internal Area can be accurately determined, whether before, on or after the Date of Practical Completion.
- 8.2 If the Developer and the Council are unable to agree a figure for the Internal Area, either of them may immediately refer the matter to the decision of a Specialist who will act as an expert.

9. Commercial Units Sustainability Requirements

The Developer must obtain for all Commercial Units a BREEAM Final Certificate achieving a "Very Good" rating and if no such standard is maintained then such suitable equivalent as the Developer proposes and the Council approves such approval not to be unreasonably withheld or delayed.

SCHEDULE 15

Appointment of Building Contractor Professional Team and Sub-Contractors

1. Basis of Appointments
 - 1.1 In respect of each Plot, the Developer or the Developer's Principal Agent is to:
 - 1.1.1 appoint the Building Contractor either by a Main Contractor or Major Packages;
 - 1.1.2 appoint or procure the appointment of each member of the Professional Team for the Relevant Plot; and
 - 1.1.3 procure that each Principal Sub-Contractor for the Relevant Plot is appointed by the Building Contractor.
 - 1.2 Before appointing any Building Contractor and appointing or procuring the appointment of Principal Sub-Contractor or member of the Professional Team, the Developer is to make due enquiry as to their repute, competence and suitability with respect to the Development Works.
 - 1.3 The Developer (subject to the proviso in this clause) will procure (unless otherwise agreed by the Implementation Group or Steering Group) at least five competitive tenders for all Building Contractor, Professional Team member or Principal Sub-Contractor appointments to demonstrate to the satisfaction of the Council (acting reasonably) that a competitive procurement process has been undertaken and competitive pricing has been achieved in each case provided that the Council will act reasonably in considering any representations made by the Developer in the number of tenders required on a case by case basis.
2. Terms of Appointments
 - 2.1 Any Building Contract is to be executed as a deed in such form and with such proper and reasonable amendments as may be agreed between the Developer and the Building Contractor and approved by the Council (acting reasonably).
 - 2.2 The Building Contract and the Appointments must permit the Council to exercise step-in rights and become the employer of the contracting party following an Event of Default under this Agreement.
 - 2.3 The Developer is to require that professional indemnity insurance is maintained throughout the period of the Development and for twelve years after the Date of Practical Completion of the Relevant Plot with reputable insurers:

- 2.3.1 by each member of the Professional Team in such amount as the Council may approve (such approval not to be unreasonably withheld or delayed) in respect of each claim that may be made;
 - 2.3.2 the Building Contractor in such amount as the Council may approve (such approval not to be unreasonably withheld or delayed) in respect of each claim that may be made; and
 - 2.3.3 by each Principal Sub-Contractor in such amount as the Council may approve (such approval not to be unreasonably withheld or delayed) in respect of each claim that may be made.
- 2.4 The obligations in paragraph 2.3 will apply in respect of each member of the Professional Team, the Building Contractor and each Principal Sub-Contractor for so long as professional indemnity insurance is generally available in the insurance market to those persons at a reasonable cost. Payment of any increased or additional premiums required by insurers by reason of those persons' own claim records or other acts or omissions or things peculiar to those persons are to be disregarded in determining whether such insurance is available at a reasonable cost.
- 2.5 The Developer is to provide the Council with:
- 2.5.1 a certified copy of each Appointment, Building Contract and Principal Sub-Contract within five Working Days of it being entered into; and
 - 2.5.2 approvals by the professional indemnity insurers of the person appointed of the forms of Building Contract, Appointments, Principal Sub-Contracts and Warranties.
3. Warranties
- 3.1 The Developer is to procure that each Building Contractor, Principal Sub-Contractor, each member of the Professional Team and the Developer's Agent unconditionally delivers Warranties to the Council on the date of their appointment.
- 3.2 The Warranties are to be materially in the form annexed to this Agreement as Appendix 14 with such amendments as approved by the Council, such approval to be subject to the provisions of paragraph 3.3 and otherwise not to be unreasonably withheld or delayed.
- 3.3 The Council will not be obliged to approve the terms of the Warranties that:
- 3.3.1 include a net contribution clause; and/or

- 3.3.2 include a limitation on liability so that only the costs of making good defects in the Development Works are recoverable.

but will act reasonably in considering such requirements on a case by case basis where the Developer can show that such clauses are a requirement of the relevant appointee.

4. Developer's obligations

4.1 The Developer is to procure that:

- 4.1.1 each member of the Professional Team complies with the terms of its Appointment;
- 4.1.2 the Building Contractor complies with the terms of the Building Contract; and
- 4.1.3 the Building Contractor and each Principal Sub-Contractor comply with the terms of their Principal Sub-Contracts.

4.2 The Developer is not without the prior written consent of Council, such consent not to be unreasonably withheld or delayed to dismiss any member of the Professional Team, or the Building Contractor, or permit a Principal Sub-Contractor to be dismissed.

4.3 The Developer is not to:

- 4.3.1 waive, release nor estop itself from enforcing or seeking redress for any breach of the Appointments, the Building Contract or the Principal Sub-Contracts; or
- 4.3.2 do or omit to do any act or thing which would entitle:
 - 4.3.2.1 any member of the Professional Team to treat its Appointment as terminated by breach;
 - 4.3.2.2 the Building Contractor to treat the Building Contract as terminated by breach;
 - 4.3.2.3 a Principal Sub-Contractor to treat a Principal Sub-Contract as terminated by breach; or
- 4.3.3 receive any commissions, inducements, or pecuniary or other advantages at any time arising from the appointment of the members of the Professional Team, the Building Contractor or any Principal Sub-Contractor.

5. Appointment Default

5.1 If there is an Appointment Default, the Developer is immediately to notify the Council in writing of the Appointment Default and the reasons for it.

5.2 Following an Appointment Default:

5.2.1 where the Developer was responsible for the original appointment, the Developer is to use reasonable endeavours to appoint another person on the terms of this Schedule in substitution for the person whose appointment was terminated; and

5.2.2 where the Building Contractor was responsible for the original appointment, the Developer is to use reasonable endeavours to procure that the Building Contractor appoints another person on the terms of this Schedule in substitution for the person whose appointment was terminated.

6. Proceedings

If the Building Contractor, any Principal Sub Contractor or any member of the Professional Team is in default or has committed a breach of their obligations in relation to the Development or any part of it, the Developer will act reasonably in determining whether to enforce its rights and remedies in respect of that breach.

SCHEDULE 16

Anti-Corruption

1. The Developer shall, and shall procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement shall:
 - 1.1 comply with all applicable Anti-Bribery Laws;
 - 1.2 not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;
 - 1.3 not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;
 - 1.4 not do or omit to do any act or thing which causes or may cause the Council to be in breach of and/or to commit an offence under any Anti-Bribery Laws;
 - 1.5 without prejudice to paragraph 1.4, not do or omit to do any act or thing which causes or may cause the Council to be guilty of an offence under section 7 Bribery Act (or would or may do so if the Council was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and
 - 1.6 provide the Council at the Developer's cost with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.
2. The Developer shall:
 - 2.1 promptly report to the Council any request or demand for any financial or other advantage of any kind received in connection with the performance of this Agreement by it or by its officers, employees, agents, sub-contractors or any other person who performs services for or on behalf of it in connection with this Agreement; and
 - 2.2 within 5 days after the expiry of each anniversary of the date of this Agreement certify to the Council in writing signed by a director of the Developer that the Developer has complied with all of its obligations under this Schedule and its sub-contractors have complied with all of the obligations imposed on them in accordance with paragraph 15. The Developer shall provide such supporting evidence of compliance as the Council may reasonably request.

3. The Developer warrants to the Council that it has not, and its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement have not:
 - 3.1 breached any applicable Anti-Bribery Laws;
 - 3.2 been convicted of any offence involving bribery, corruption, fraud or dishonesty;
 - 3.3 offered, promised, given, requested, agreed to receive, received or accepted a bribe or financial or other advantage or committed any corrupt act;
 - 3.4 done or omitted to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;
 - 3.5 done or omitted to do any act or thing which caused or may cause any person to be in breach of and/or to commit an offence under any Anti-Bribery Law;
 - 3.6 without prejudice to paragraph 3.5, done or omitted to do any act or thing which caused or may cause any person to be guilty of an offence under section 7 Bribery Act (or would or may have done so if the Bribery Act had been in force at the relevant time or would or may have done so or would or may do so if the relevant person was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct);
 - 3.7 to the best of its knowledge and belief, been, and are not, the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under Anti-Bribery Laws;
 - 3.8 been listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts; or
 - 3.9 given any financial or other advantage, inducement or reward (whether directly or through any third party) to any person in connection with the awarding or continuation in force of this Agreement or any other contract relating to the Development, except as notified by the Developer to the Council under paragraph 6.
4. The Developer shall immediately give written notice to the Council:
 - 4.1 upon a breach, or suspected breach, of any of its obligations at paragraph 1 or 2 occurring;
 - 4.2 upon becoming aware of a breach of any of its warranties at paragraph 3; and

- 4.3 upon becoming aware of any event or circumstance which would cause it to be unable to repeat any of the warranties at paragraph 3 at the relevant time.
5. Without prejudice to paragraph 4, the Developer shall immediately give written notice to the Council of any financial or other advantage, inducement or reward it has given or intends to give (whether directly or through any third party) to any person (including limitation any employee of the Council) in connection with the awarding or continuation in force of this Agreement or any other contract relating to the Development.
6. The Developer:
- 6.1 shall, and shall procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement shall, comply with the Anti-Corruption Policy at all times; and
- 6.2 shall immediately give written notice to the Council of any non-compliance with the Anti-Corruption Policy of which it becomes aware.
7. If the Council makes any change to its anti-corruption policy from time to time, it shall promptly provide the Developer with a copy of the revised policy and the Developer shall promptly acknowledge that it has received this. The revised policy shall be deemed to be the "Anti-Corruption Policy" from the date on which it is provided to the Developer (or, if later, from the date specified by the Council).
8. The Developer shall keep, for a minimum of six years and at its normal place of business, detailed, accurate and up to date records and books of account showing all payments made and received and all other advantages given and received by the Developer in connection with this Agreement and the Development and the steps taken by the Developer to comply with Anti-Bribery Laws and the Anti-Corruption Policy. The Developer shall ensure that those records and books of account are sufficient to enable the Council to verify the Developer's compliance with this Schedule.
9. The Developer shall permit the Council, and any person nominated by it for this purpose, to have such access on demand to the Developer's premises, personnel, systems, books and records as the Council may reasonably require to verify the Developer's compliance with this paragraph 1.
10. The Council may terminate this Agreement by giving not more than three months written notice to that effect to the Developer if the Developer is in material breach of any of its obligations under paragraph 1, 2 or 6 or any of its warranties under paragraph 3.

11. If the Council terminates this Agreement in accordance with paragraph 10, the Developer shall not be entitled to claim compensation or any further remuneration from the Council, regardless of any activities carried out or agreements with third parties entered into before termination.
12. The Council shall be entitled, by giving written notice to that effect to the Developer, to require the Developer to remove from the performance of this Agreement any of the Developer's officers, employees, agents or sub-contractors in respect of whom the Developer is in breach of any of its obligations under paragraph 1, 2 or 6 or any of its warranties under paragraph 3.
13. The Developer shall indemnify, keep indemnified and hold harmless the Council in full and on demand from and against all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and proper and reasonable legal costs (on an indemnity basis), judgments and costs (including proper and reasonable costs of enforcement) and expenses which the Council incurs or suffers directly or indirectly in any way whatsoever as a result of:
 - 13.1 any breach by the Developer of any of its obligations under paragraph 1 or 2,
 - 13.2 any breach by the Developer of any of its warranties under paragraph 3
 - 13.3 any breach by the Developer of any of its obligations under paragraph 6;
 - 13.4 any proceedings under section 7 Bribery Act being brought against the Council as a result of the conduct of the Developer or any of its officers, employees, agents or sub-contractors or any other persons who perform services for or on behalf of it in connection with this Agreement, where such proceedings do not result in a conviction against the Council; or
 - 13.5 any breach by any sub-contractor of the Developer of any equivalent provisions contained in the relevant sub-contract.
14. The Developer shall indemnify, keep indemnified and hold harmless the Council in full and on demand from and against all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and proper legal costs (on an indemnity basis), judgments and proper costs (including costs of enforcement) and proper expenses which the Council incurs or suffers directly or indirectly in any way whatsoever as a result of, including the proper costs of procuring the services from a person other than the Developer (including the proper costs of interim service provision, the proper costs of any re-tender and the amount by which any new service provider's charges exceed the charges payable to the Developer under this Agreement).

- 15. The Developer shall include in any sub-contract which it enters into in connection with this Agreement:
 - 15.1 a Schedule equivalent to this Schedule; and
 - 15.2 a right under the Contracts (Rights of Third Parties) Act 1999 for the Council to exercise equivalent rights over the sub-contractor to those which it exercises over the Developer in paragraph 10.

SCHEDULE 17

Environmental Provisions

1. Defined terms

In this Schedule, the following words and expressions have the following meanings:

"1990 Act"	Part IIA Environmental Protection Act 1990
"Environmental Authority"	any authority, whether statutory or non-statutory or governmental or non-governmental, having responsibility for Environmental Matters under Environmental Law
"Environmental Costs"	<p>all or any of the following:</p> <ul style="list-style-type: none">(a) the costs incurred by any Environmental Authority in carrying out any investigation, monitoring or remedial action in respect of any Environmental Matters; and(b) the proper and reasonable costs incurred or which would be incurred by the Council in complying with the terms of an Environmental Notice
"Environmental Information"	<p>the following reports, surveys and other environmental information:</p> <p>The reports surveys and other information set out in the schedule annexed as Appendix 15</p>
"Environmental Law"	<p>all statutes, regulations and subordinate legislation and all treaties, European Union laws and common law which at any time relate to Environmental Matters or health and safety, whether civil, administrative or criminal, including, without limitation:</p> <ul style="list-style-type: none">(a) the 1990 Act;(b) the Contaminated Land (England) Regulations 2006; and

- (c) Statutory Guidance and all other regulations, statutory or non-statutory guidance, circulars, codes of practice, directives and conventions made under any of the above

"Environmental Liabilities"

all of any of the following arising from or as a result of Environmental Matters:

- (a) actions, claims, demands and proceedings taken or made against the Council;
- (b) all proper costs, damages, expenses, liabilities and losses incurred by the Council including, without limitation:
 - (i) the proper costs of carrying out investigations, monitoring or remedial action in respect of Environmental Matters;
 - (ii) reasonable professional fees incurred in investigating or defending any actions, claims, demands and proceedings taken or made against the Council, whether successful or not; and
- (c) fines and penalties

"Environmental Matters"

all or any of the following:

- (a) Contamination;
- (b) any migration or other escape of any Hazardous Materials or Waste at, from or to the Development Area at any time whether before or after the Date of Actual Completion;
- (c) the creation of any state of affairs

damaging or harmful to the Environment including any radiation, common law or statutory nuisance arising from Contamination; and

- (d) the contact with and exposure of any person to Hazardous Materials or Waste

"Environmental Notice"

any statutory notice or requirement of any court or any Environmental Authority relating to Environmental Matters

"Statutory Guidance"

all or any of the following:

- (a) statutory guidance issued under the 1990 Act;
- (b) any similar guidance, whether statutory or non-statutory, issued in relation to other Environmental Laws under which similar responsibilities may be imposed

2. Agreement as to liabilities

2.1 The Council and the Developer agree that:

2.1.1 if any Environmental Notice is served on either of them then, as between the Council and the Developer after completion of a Building Lease, the sole responsibility for complying with the Environmental Notice is to rest with the Developer to the exclusion of the Council in relation to the Plot the subject of the Building Lease;

2.1.2 if any Environmental Authority wishes to recover Environmental Costs from either or both of the Council and the Developer then, as between the Council and the Developer, the sole responsibility for the payment of the Environmental Costs is to rest with the Developer to the

3. Exclusion of the Council

3.1 The agreements in paragraph 2.1 are made with the intention that:

3.1.1 the Environmental Authority serving the Environmental Notice or seeking to recover Environmental Costs should give effect to the agreement pursuant to the Statutory Guidance; and

3.1.2 in the absence of Statutory Guidance, the agreement should be taken into account by the Environmental Authorities under any Environmental Law under which similar responsibilities may be imposed in considering whether and if so

how to exercise any discretion available to them or whether and if so how to make any relevant determination.

4. Sold with information

4.1 The Developer acknowledges to the Council that:

4.1.1 it has been provided with the Environmental Information prior to the date of this Agreement; and

4.1.2 the Environmental Information is sufficient to make the Developer aware of the presence of the Contamination referred to in the Environmental Information.

4.2 The Developer acknowledges to the Council that:

4.2.1 both the Council and the Developer are large commercial organisations; and

4.2.2 the Developer has been given permission and adequate opportunity to carry out its own investigations of the Development Area for the purpose of ascertaining whether, and if so the extent to which, there is Contamination.

4.3 The acknowledgments in this paragraph 4 are made in accordance with Statutory Guidance to exclude the Council from liability as an appropriate person to bear responsibility for any Environmental Costs.

5. Waiver of confidentiality

Nothing in this Agreement is to prevent either the Council or the Developer disclosing the terms of this Agreement to any Environmental Authority.

6. Environmental Liability

The Developer will indemnify in each Building Lease for the relevant Plot the Council in respect of all proper Environmental Liabilities.

SCHEDULE 18

Insolvency Defaults

1. Defined terms

1.1 In this Schedule, the following words and expressions have the following meanings:

"1986 Act"	Insolvency Act 1986
"1994 Order"	Insolvent Partnerships Order 1994
"LPA"	Law of Property Act 1925

2. Insolvency Default

2.1 Insolvency occurs if:

2.1.1 a person is a company or a limited liability partnership and:

- 2.1.1.1 it enters into a voluntary arrangement under Part I of the 1986 Act or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debt;
- 2.1.1.2 an administrator is appointed under Part II of the 1986 Act;
- 2.1.1.3 a receiver or manager, including an administrative receiver, is appointed whether under Part III of the 1986 Act, under the LPA or otherwise;
- 2.1.1.4 a resolution to wind-up is passed or a provisional liquidator is appointed or a winding-up order is made under Part IV of the 1986 Act unless for the purpose of a solvent amalgamation or reconstruction of the company;
- 2.1.1.5 a scheme of arrangement is made under Part 26 Companies Act 2006;
- 2.1.1.6 it changes its status from unlimited to limited; or
- 2.1.1.7 it is struck off the register of companies or otherwise ceases to exist;

2.1.2 two or more people are in partnership (including a limited liability partnership) and:

SCHEDULE 19

Step-In Agreement

Dated

2014

- (3) [COUNCIL]
- (4) [DEVELOPER]
- (5) [INVESTOR]

Step In Agreement

relating to Redevelopment of property at the Aylesbury Estate
Southwark

Eversheds LLP
One Wood Street
London
EC2V 7WS

Tel: 0845 497 9797
Fax: 0845 497 4919
Int: +(0) 20 7919 4500
DX: 154280 Cheapside 8
www.eversheds.com

THIS AGREEMENT dated
is made

201()

BETWEEN:

- (6) [COUNCIL] of [] "the Council"
- (7) [DEVELOPER] of [] "the Developer"
- (8) [INVESTOR] of [] "the Investor"

1. DEFINITIONS AND CONSTRUCTION

1.1 In this Agreement the following expressions shall (unless otherwise required) have the following meanings:-

"Council Notice"	a written notice by the Council to the Investor recording the Council's intention to determine the Development Agreement in accordance with its provisions
"Deed of Covenant"	a deed of covenant to be given by the Investor or a Party comprising an unconditional and unqualified covenant for the benefit of the Council and otherwise in a form reasonably acceptable to the Council (provided that the Investor will not assume the obligations of the Developer incurred before the exercise of the Investor's rights under this Step In Agreement and referred to in Clause 3) to complete the Development Works and to perform the Developer's obligations under the Development Agreement and to assume the benefit of the Development Agreement
"Default"	the occurrence of any event entitling the Council to determine the Agreement
"Development Agreement"	an agreement dated [] and made between (1) the Council [and] (2) the Developer [and] (3) the []
"Development Works"	the building and other works to be carried out and completed in accordance with the provisions of the Development Agreement

"Finance Agreement"	{ }
"Investor"	{ }
"Investor Notice"	a written notice by the Investor stating whether it is willing to enter into a Deed of Covenant [or to procure the entry into of a Deed of Covenant by a Party]
"Investor's Step-in Period"	60 Working Days from service of any Council Notice
"Party"	a natural or legal person or persons nominated by the Investor and acceptable to the Council, acting reasonably, to enter into a Deed of Covenant

- 1.2 Any covenant by a party to this Step In Agreement not to do or omit an act or thing will be deemed to include an obligation not to permit such act or thing to be done or omitted.
- 1.3 Clause headings will not in any way affect the construction of this Step In Agreement.
- 1.4 Where undefined in this Step In Agreement words and expressions have the meaning given in the Development Agreement.
2. COUNCIL'S NOTICE AND STEP-IN
- 2.1 If an Event of Default occurs and the Council intends to determine the Development Agreement pursuant to clause 13 of the Development Agreement (but not otherwise) the Council will forthwith serve an Council Notice on the Investor.
- 2.2 The Investor may serve an Investor Notice at any time on the Council.
- 2.3 If an Council Notice or an Investor Notice is served then the following will apply:
 - 2.3.1 if the Investor serves an Investor Notice then the Investor will indicate (within the Investor Notice) whether it wishes to exercise step-in rights under and in accordance with this Step In Agreement and notify the Developer accordingly;
 - 2.3.2 if the Council serves a Council Notice then the Investor will indicate to the Council in writing within the Investor's Step in Period whether it wishes to exercise step-in rights under and in accordance with this Step In Agreement and notify the Developer accordingly;

2.3.3 if the Investor indicates (whether within the Investor Notice or during the Investor Step in Period) that it wishes to exercise step-in rights under and in accordance with this Step In Agreement then:

2.3.3.1 the Investor will (within 60 Working Days of issuance of the Investor Notice or during the Investor Step-in Period) deliver a duly executed Deed of Covenant to the Council;

2.3.3.2 both the Developer and Council will permit the Investor or (as the case may be) the Party its representatives or such other persons as the Investor may direct to comply with the Developer's obligations (in respect of the Development Works) and exercise the rights on the part of the Developer contained in the Agreement;

2.3.3.3 the Council will:

(a) (subject to compliance with its obligations in the Deed of Covenant) not be entitled to determine the Agreement (which shall remain in full force and effect) and be deemed to have waived all or any rights of determination arising out of any breach or failure to comply with the Development Agreement by the Developer or the Event of Default but this is without prejudice to the exercise of such rights in respect of any breach or failure to comply with the Development Agreement as appropriate by the Investor occurring after the delivery of the Deed of Covenant; and

(b) comply with its obligations in the Development Agreement.

2.3.4 If the Investor:

2.3.4.1 indicates in writing to the Council (whether within the Investor Notice or during the Investor Step-In Period) that it does not wish to exercise step in rights under and in accordance with this Step In Agreement; or

2.3.4.2 fails to indicate its wish to exercise step-in rights under and in accordance with this Step In Agreement during the Investor's Step-In Period; or

2.3.4.3 does not exercise step in rights in accordance with this Step In Agreement notwithstanding an indication given in an Investor Notice that it intends to exercise such rights

then the Council will be entitled to determine the Development Agreement.

3. DEVELOPER'S LIABILITY

The exercise of step-in rights in accordance with this Step In Agreement by the Investor shall be without prejudice to any liability of the Developer under the Development Agreement.

4. DEVELOPER

The Developer hereby consents to the Council entering into this Step In Agreement.

5. ASSIGNMENT BY INVESTOR

Subject to obtaining the prior written consent of the Council (such consent not unreasonably withheld or delayed) the Investor shall be entitled to assign its rights and interests under this Step In Agreement to any individual or company or other person or body (not being an overseas company unless an Approved Fund or otherwise approved by the Council at its discretion) simultaneously to and to the same person as an assignment of its interests under the Finance Agreement.

6. GOOD FAITH

The parties hereby agree that in carrying out the provisions of this Step In Agreement they shall act towards each other with good faith.

7. GENERAL

7.1 Reference to any agreement deed or other document where used in this Step In Agreement shall be deemed to be a reference to that agreement deed or other document as the same may be assigned amended supplemented substituted or novated from time to time;

7.2 For so long as the Finance Agreement subsists the Council and the Developer agree not to amend vary or supplement the Development Agreement or enter into an agreement collateral to the Development Agreement (save an agreement which is an implementation of the terms of the Agreements) without the prior written consent of the Investor (such consent not to be unreasonably withheld or delayed).

8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Step In Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

9. NOTICES

9.1 All notices served in this Step In Agreement shall be served by way of guaranteed next day delivery.

9.2 The relevant address and reference in respect of which notices apply are as follows:-

9.2.1 Investor For the attention of ().

9.2.2 Council For the attention of [].

9.2.3 Developer For the attention of [].

[Insert execution blocks]

SCHEDULE 20

Freedom of information and Confidentiality

PART 1

1. Defined terms

In this Schedule, the following words and expressions have the following meanings:

"Commercially Sensitive Information"	the information to be listed in Part 2 of this schedule comprising the information of a commercially sensitive nature relating to the Developer, its intellectual property rights or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Developer significant commercial disadvantage or material financial loss.
"Data Protection Legislation"	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998.
"Developer's Personnel"	Any employees of the Developer whether full or part time, or employed on an agency or temporary basis.

- 2. Freedom of Information
 - 2.1 The Developer acknowledges that the Council is subject to the requirements of the Information Legislation and shall assist and co-operate with the Council (at the Developer's expense) to enable the Council to comply with its information disclosure obligations.
 - 2.2 The Developer shall and shall procure that its Sub-Contractors are under contractual obligations (which the Developer will use reasonable endeavours to enforce) to:
 - 2.2.1 transfer all Requests for Information that it receives to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 2.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - 2.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in the Information Legislation.
 - 2.3 The Council shall be responsible for determining at its absolute discretion, and notwithstanding any other provision in this agreement or any other agreement, whether the Commercially Sensitive Information and/or any other Information:
 - 2.3.1 is exempt from disclosure in accordance with the provisions of the Information Legislation; and/or
 - 2.3.2 is to be disclosed in response to a Request for Information.
 - 2.4 In no event shall the Developer respond directly to a Request for Information unless expressly authorised to do so by the Council.
 - 2.5 The Developer acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice ("the Code") on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the Information Legislation to disclose Information concerning the Developer or the Development:
 - 2.5.1 In certain circumstances without consulting with the Developer; or
 - 2.5.2 following consultation with the Developer and having taken their views into account.

provided always that where paragraph 2.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Developer advanced notice, or failing that, to draw the disclosure to the Developer's attention after any such disclosure.

- 2.6 The Developer shall ensure that all Information acquired or produced in the course of the agreement or relating to the agreement is safely retained and available for disclosure during the Development Period and for six (6) years afterwards and shall permit the Council, its internal auditors and the District Auditor to inspect such records as requested from time to time. In default of compliance, the Council may recover possession of such materials and the Developer shall permit the Council or its approved agents to enter for those purposes any premises of the Developer where any such materials may be held.
- 2.7 The Developer acknowledges that any lists or Schedules provided by it outlining Commercially Sensitive Information is of indicative value only and that the Council may nevertheless be obliged to disclose it in accordance with paragraph 2.5 above.
- 2.8 Where the Council requires any Information from the Developer relating to any potential or actual claim by a third party against the Council, the Developer shall ensure that any Information requested by the Council is supplied to the Council in sufficient time to enable the Council to comply with any relevant procedural rules.
- 3. Data protection
 - 3.1 The Developer shall (and shall procure that any of the Developer's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the Agreement and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the agreement.
 - 3.2 Notwithstanding the general obligation in paragraph 3.1 above, where the Developer is processing Personal Data as a Data Processor for the Council, the Developer shall:
 - 3.2.1 process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this agreement or as otherwise notified by the Council to the Developer during the Development Period);
 - 3.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the services to be provided pursuant to this Agreement ("the Services") or as is required by law or any regulatory body;

- 3.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and/or reputational damage which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 3.2.4 take all necessary steps to ensure the reliability of any Developer's Personnel who have access to the Personal Data;
- 3.2.5 obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors for the provision of the Services;
- 3.2.6 ensure that all of the Developer's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this paragraph 3.2;
- 3.2.7 ensure that none of the Developer's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- 3.2.8 notify the Council (within two Working Days) if it receives:
 - 3.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 3.2.8.2 a complaint or request relating to the Council's obligations under the Data Protection Legislation;
- 3.2.9 provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
 - 3.2.9.1 providing the Council with full details of the complaint or request;
 - 3.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
 - 3.2.9.3 providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
 - 3.2.9.4 providing the Council with any information requested by the Council;

- 3.2.10 permit the Council or any representative authorised by the Council (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Developer's Data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Developer is in full compliance with its obligations under this agreement;
 - 3.2.11 provide a written description of the technical and organisational methods employed by the Developer for processing Personal Data (within the timescales required by the Council);
 - 3.2.12 not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the date of this Agreement, the Developer (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area the Developer shall submit a request to the Council pursuant to the Change Procedure;
 - 3.2.13 promptly notify the Council of any breach of the security measures required to be put in place pursuant to paragraph 3.1 above; and
 - 3.2.14 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under this Agreement.
- 3.3 The provisions of these provisions shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
4. Confidentiality
- 4.1 Subject to paragraph 4.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives and personnel from making any disclosure to any person of any matters relating hereto.
- 4.2 Paragraph 4.1 shall not apply to any disclosure of information:
- 4.2.1 required by any applicable law, provided that paragraph 4.1 shall apply to any disclosures required under the Information Legislation;
 - 4.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
 - 4.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of paragraph 4.1;

- 4.2.4 by the Council of any document to which it is a party and which the parties to this agreement have agreed contains no Commercially Sensitive Information;
 - 4.2.5 to enable a determination to be made under clause 14 of the Agreement;
 - 4.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 4.2.7 by the Council to any other department, office or agency of the Government, including the District Auditor;
 - 4.2.8 by the Council in accordance with any Council or Government initiative or policy on open data, transparency and public accountability, including publishing a copy of the contract (redacting any Commercially Sensitive Information) following execution; and
 - 4.2.9 in respect of which both parties has given its prior written consent to disclosure (including any press release to be issued pursuant to paragraph 4.5 below).
- 4.3 The Developer shall keep proper security arrangements against the destruction, loss or unauthorised use or alteration of Information. Such arrangements shall ensure that access to Information is only obtained by such officers of the Council as are specifically designated by the Council. The Developer shall restore at its own expense Information which is destroyed or in respect of which an unauthorised alteration is made.
- 4.4 On or before the end of the Development Period or on any earlier termination of this Agreement the Developer shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.
- 4.5 The Developer and the Council or either of them may at any time issue a press release in respect of the Development in a form previously approved by the Council and the Developer (such approval not to be unreasonably withheld or delayed).
5. Audit, Enquiry or Investigation
- 5.1 During the term of the Agreement and for a period of six (6) years after the Development Period, the Council may conduct or be subject to an audit for the following purposes:

- 5.1.1 to verify the accuracy of any charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Development;
 - 5.1.2 to review the integrity, confidentiality and security of any data relating to the Council or any service users;
 - 5.1.3 to review the Developer's compliance with the Information Legislation, in accordance with this schedule;
 - 5.1.4 to review any records created during the Development;
 - 5.1.5 to review any books of account kept by the Developer in connection with the Development;
 - 5.1.6 to carry out the audit and certification of the Council's accounts;
 - 5.1.7 to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 and/or sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - 5.1.8 to verify the accuracy and completeness of any reports delivered or required by the Agreement.
- 5.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause more than twice in any calendar year.
- 5.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Developer or delay the Development or the carrying out of the Developer's obligations.
- 5.4 Subject to the Council's obligations of confidentiality, the Developer shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 5.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 5.4.2 reasonable access to any sites controlled by the Developer and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and/or
 - 5.4.3 access to the Developer's personnel.

- 5.5 The Council shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 5.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Developer in which case the Developer shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 5.7 If an audit identifies that:
- 5.7.1 the Developer has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Developer's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Developer's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 5.7.2 the Council has overpaid any Charges, the Developer shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Developer fails to make this payment; and
 - 5.7.3 the Council has underpaid any Charges, the Council shall pay to the Developer the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Developer in relation to invoicing within 20 days.
- 5.8 The Developer shall at all times during the term of the Agreement and for a period of six (6) years afterwards fully co-operate with any enquiry or investigation (whether routine or specific) which in any way concerns, affects or relates to the Services. Such enquiry or investigation may include, inter alia:-
- 5.8.1 the Council's Executive and the Council's Overview and Scrutiny Committee and scrutiny sub-committee undertaking their respective functions;
 - 5.8.2 an investigation by the Council into a complaint about the acts or omissions of the Developer, the Developer's Personnel or agents made under the Equalities Legislation;
 - 5.8.3 the Council's auditors (whether internal or external);
 - 5.8.4 the Local Government Ombudsman.

5.9 Such co-operation shall include (but not be limited to the following):-

- 5.9.1 providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relates to the subject or service under investigation;
- 5.9.2 providing access to the Developer's premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Developer in the performance of its obligations in relation to the Development;
- 5.9.3 providing access to the Developer's Personnel (of whatever seniority) involved in the agreement (including management or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
- 5.9.4 maintaining the confidentiality of the enquiry or investigation when required to do so;
- 5.9.5 making such explanations as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of the agreement, the Council's standing orders and financial regulations and statutory provisions relating to the agreement are being complied with.

6. Complaints and Correspondence

- 6.1 The Developer shall maintain a register of any complaints and adverse comments received by the Developer about the performance of the Developer's obligations in relation to the Development and/or this Agreement.
- 6.2 The Developer shall provide to the Council copies of all complaints and adverse comments relating to the performance of the Developer of its obligations in this Agreement and provide such statistical information as the Council may from time to time reasonably require. Such information shall be provided within five (5) Working Days of receipt of the complaint or adverse comment.
- 6.3 The Developer shall co-operate with the Council in connection with any investigations undertaken by the Council or a third party acting on its behalf.

7. Service standards

- 7.1 The Developer shall carry out its obligations in relation to the Agreement, or procure that they are provided:

PART 2

1. Agreed Commercially Sensitive Information
 - 1.1 Definition of “Developer’s Priority Return”;
 - 1.2 Schedule 4 in its entirety;
 - 1.3 Business Plan definitions:
 - 1.3.1 “Developer’s Priority Return”;
 - 1.3.2 “Premium”; and
 - 1.4 Business Plan Section 12 in its entirety.

SCHEDULE 21

TUPE

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Admission Agreement	the agreement to be entered into in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008, as amended, by the administering Council, the Council and the Developer or Sub-Contractor, as appropriate.
Appropriate Pension Provision	<p>in respect of Eligible Employees, either:</p> <p>(a) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Effective Date; or</p> <p>(b) pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.</p>
Condition Precedent	the Parties, acting in the Steering Group, jointly determining that TUPE applies in relation to the cessation of Services by the Council for a Plot and the subsequent commencement of Services by the Developer for a Plot.
Directive	the European Directive 2001/23/EC as amended from time to time.
Effective Date	in relation to a Transferring Employee the date upon which a relevant transfer to the Developer or Sub-Contractor takes place in

accordance with TUPE.

Eligible Employees

the Transferring Employees or Third Party Employees who are active members of (or are eligible to join) the LGPS on the Effective Date.

Employee Liability Information

includes the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE as well as:

- (a) the identity of the Third Party Employer if the employer is not the Council
- (b) the identity and age of the employee; and
- (c) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (d) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (e) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Developer or Sub-Contractor arising out of the employee's employment with the transferor; and

LGPS	Local Government Pension Scheme
Loss	all costs claims liabilities and expenses (including reasonable legal expenses), including without limitation all Employment Liabilities
Services	Housing management services in the area of the Aylesbury Estate including day to day repairs
Sub-Contractor	any company firm or organisation engaged by the Developer to provide any part of the Services
Third Party Employee	any Estate Employee employed by any Third Party Employer whose contract of employment transfer with effect from the Effective Date to the Developer or Sub-contractor by virtue of the application of TUPE and who is identified in the Employee Schedule
Third Party Employer	a provider engaged by the Council in connection with the Estate
Transferring Employee	any Estate Employee of the Council whose contract of employment transferred with effect from on or after the Effective Date to the Developer or Sub-Contractor by virtue of the application of TUPE and who is identified in the Employee Schedule
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended from time to time

2. BACKGROUND

- 2.1 The Council and the Developer (together the "Parties") consider that it is unlikely that TUPE will apply to the proposed arrangements in this Agreement due to the nature of the Project with phased demolition and construction. This means that for each Plot there will be a significant period of time following demolition of existing buildings where the Services will not be provided in respect of that Plot. Following construction the Developer will then take responsibility for the Services.

- 2.2 It is envisaged that there will be a significant gap between the date upon which the Council stops providing Services for a Plot and the date upon which the Developer starts providing the Services for that Plot.
- 2.3 It is anticipated that the Council will need either to re-deploy Estate Employees elsewhere or make them redundant.
- 2.4 In the event that TUPE does apply, the Parties agree to be bound by the provisions as set out in this Schedule 21.

3. REDUNDANCY AND REDEPLOYMENT

- 3.1 The Council shall take reasonable steps to redeploy all Estate Employees.
- 3.2 The Council shall indemnify the Developer and any Sub-Contractor for any Losses arising from any claim against the Developer or Sub-Contractor by any Estate Employee or any representative of any Estate Employees or any Union in relation to or arising from or in connection with the Council or Third Party Employer:
 - 3.2.1 giving any Estate Employee notice of termination of employment;
 - 3.2.2 terminating any Estate Employee's employment without notice;
 - 3.2.3 redeploying any Estate Employee;
 - 3.2.4 relocating any Estate Employee;
 - 3.2.5 failing to consult about any redundancy affecting any Estate Employee;
or
 - 3.2.6 informing any Estate Employee that TUPE applied to them (otherwise than after the Condition Precedent occurring).
- 3.3 In the event that the Developer enters into any sub-contract in connection with this Agreement, it shall impose obligations on its Sub-contractors in the same terms as those imposed on it under this Schedule 21 and shall procure that the Sub-contractor complies with such terms.

4. PROVISIONS DEPENDENT ON CONDITION PRECEDENT

In the event of the Condition Precedent occurring, or TUPE becoming operational as a matter of law, the Council and the Developer agree:

- 4.1 The contracts of employment (and any collective agreement) of any Transferring Employees and any Third Party Employees shall transfer to the Developer or Sub-Contractor as appropriate.

- 4.2 The Developer shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE, the Directive, the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- 4.3 Without prejudice to its obligation pursuant to TUPE to provide the Employee Liability Information, the Council shall 28 days before the Effective Date to the extent lawfully permitted provide the Developer and/or Sub-Contractor with the Employee Schedule and the Employee Liability Information.
- 4.4 The Council shall notify the Developer and/or Sub-Contractor of any material change to the Employee Schedule and the Employee Liability Information as soon as is reasonably practicable, and shall upon request by the Developer and/or Sub-Contractor meet the Developer and/or Sub-Contractor to discuss the information disclosed.
- 4.5 The Council does not warrant that the Employee Liability Information is complete and accurate at any time and reserves the right to advise the Developer up to the Effective Date of any changes to the Employee Liability Information but again will not warrant the accuracy or completeness of such changed information.
- 4.6 The Council shall notify the Developer and/or Sub-Contractor of any change to the Employee Liability Information which would increase: (i) the costs associated with employing staff and/or (ii) the numbers and make up of staff in the six months prior to the Effective Date.
- 4.7 During the period from the Condition Precedent occurring up to and including the Effective Date:
- 4.7.1 the Council shall (and shall take reasonable steps to procure that any Third Party Employer shall), enable and assist the Developer and/or Sub-Contractor and such other persons as the Developer may determine to communicate with the Estate Employees and their trade union or other employee representatives;
- 4.7.2 the Council shall not (and shall take reasonable steps to procure that any Third Party Employer shall not), without the prior written consent of the Developer and/or Sub-Contractor:
- 4.7.2.1 amend or vary the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and job description) of any Transferring Employees or Third Party Employees (other than where such amendment or variation has previously been agreed between the Council and the Transferring Employees or Third Party Employees in the normal course of business

or is consequent upon amendments to a collective agreement, and where any such amendment or variation is not in any way related to the transfer to the Developer and/or Sub-Contractor);

4.7.2.2 terminate or give notice to terminate the employment or engagement of any Transferring Employees or Third Party Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);

4.7.2.3 employ or assign any person to the Estate who would or might as a consequence of such employment or assignment transfer under TUPE to the Developer or Sub-Contractor.

4.8 The Developer shall (and shall procure that any Sub-Contractor shall) in accordance with TUPE recognise the trade unions representing the Transferring Employees and Third Party Employees after the transfer to the same extent as they were recognised by the Council, or Third Party Employer before the Effective Date.

4.9 The Developer shall (and shall procure that any relevant Sub-Contractor shall) ensure that all Eligible Employees are offered Appropriate Pension Provision during their employment with the Developer or Sub-Contractor with effect from the Effective Date up to and including the date of the termination or expiry of this agreement.

4.10 The Developer shall comply (and shall procure that any Sub-Contractor complies) with its obligations under Regulation 13 of TUPE during the period prior to the Effective Date.

4.11 The Council shall comply (and shall procure that any Third Party Employer complies) with its obligations under Regulations 13 and 14 of TUPE during the period prior to the Effective Date, save where the Council (or Third Party Employer) is unable to do so as a result of the failure of the Developer and/or any Sub-Contractor to comply with their duties under Regulation 13 of TUPE.

4.12 Provided the Council has provided the Developer (and/or Sub-Contractor) with the Employee Schedule and the Employment Liability Information in relation to the Transferring Employees and Third Party Employees, the Developer shall (and shall procure that any Sub-Contractor shall) within 10 Working Days of a request by the Council and/or the Third Party Employer provide details of any measures that the Developer or any Sub-Contractor envisages it will take in relation to any Transferring Employees and any Third Party Employees including any proposed changes to terms and conditions of employment. If there are no

measures, the Developer shall give confirmation of that fact, and shall indemnify the Council and any Third Party Employer against all losses resulting from any failure to comply with this obligation.

- 4.13 If in connection with the development of the Estate it is found or alleged that the employment of any person other than a Transferring Employee or a Third Party Employee has transferred to the Developer or a Sub-Contractor pursuant to the Directive or the TUPE:
- 4.13.1 the Developer shall, and shall procure that any Sub-Contractor shall, notify the Council, of that finding or allegation immediately on becoming aware of it;
 - 4.13.2 in consultation with the Developer and/or any Sub-Contractor (if relevant), the Council (or Third Party Employer) may within five (5) Business Days of becoming aware of the allegation or finding make that person a written offer of employment to commence on the same terms and conditions as that person was employed prior to the transfer (actual or alleged);
 - 4.13.3 the Developer (or Sub-Contractor, if relevant) may, within 28 days after becoming aware of that finding or allegation, if that person is still an employee of the Developer (or Sub-Contractor, if relevant) and has either not received or (if received) has not accepted an offer of employment made in accordance with this paragraph 4.13, dismiss that person; and
 - 4.13.4 the Council shall indemnify the Developer and/or any Sub-Contractor against all reasonable Losses which the Developer (or, where applicable, the Sub-Contractor) may suffer or incur in respect of that dismissal and the employment of that person up to the date of the dismissal and any other claim brought by or on behalf of that person.

5. PROVISIONS IRRESPECTIVE OF CONDITION PRECEDENT

In the event that TUPE is found by a Court or a Tribunal to apply to any Estate Employee (whether or not the Condition Precedent has occurred) or in the event that the Condition Precedent has occurred:

- 5.1 The Council shall be responsible for all emoluments and outgoings in respect of the Estate Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Effective Date, and will indemnify the Developer (both for itself and any Sub-Contractor) against Losses incurred by the Developer or any Sub-Contractor in respect of the same.

- 5.2 The Developer shall be responsible for all emoluments and outgoings in respect of the Transferring Employees and Third Party Employees transferring to the Developer (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Transfer Date, and will indemnify the Council (both for itself and Third Party Employer) against Losses incurred by the Council or any Third Party Employer in respect of the same.
- 5.3 The Developer shall procure that the Sub-Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees and Third Party Employees transferring to the Sub-Contractor (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Transfer Date, and will procure that the Sub-Contractor will indemnify the Council (both for itself and Third Party Employer) against Losses incurred by the Council or any Third Party Employer in respect of the same.
- 5.4 The Council shall (and shall use reasonable endeavours to procure that any Third Party Employer shall) in respect of the Estate Employees indemnify the Developer and any Sub-Contractor against all reasonable Losses incurred by that party in connection with or as a result of:
- 5.4.1 any claim or demand by any current or former Estate Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Council or Third Party Employer, as the case may be, in respect of any Estate Employee. For the avoidance of doubt, this indemnity shall apply in respect of the reasonable Losses incurred by the Developer or Sub-Contractor in respect of the period after the Effective Date where the claim (such as, without limitation, a claim for equal pay) arises out of circumstances which arose on or before the Effective Date); and/or
- 5.4.2 any failure by the Council or Third Party Employer to comply with its or their obligations under Regulations 13 and 14 of TUPE, or any award of compensation under Regulation 15 of the Regulations, save where such failure arises from the failure of the Developer or any Sub-Contractor to comply with its duties under Regulation 13 of the TUPE.

- 5.5 If in connection with the development of the Estate it is found or alleged that the employment of any person other than an Estate Employee has transferred to the Developer or a Sub-Contractor pursuant to the Directive or the TUPE:
- 5.5.1 the Developer shall, and shall procure that any Sub-Contractor shall, notify the Council, of that finding or allegation immediately on becoming aware of it;
 - 5.5.2 in consultation with the Developer and/or any Sub-Contractor (if relevant), the Council (or Third Party Employer) may within five (5) Business Days of becoming aware of the allegation or finding make that person a written offer of employment to commence on the same terms and conditions as that person was employed prior to the transfer (actual or alleged);
 - 5.5.3 the Developer (or Sub-Contractor, if relevant) may, within 28 days after becoming aware of that finding or allegation, if that person is still an employee of the Developer (or Sub-Contractor, if relevant) and has either not received or (if received) has not accepted an offer of employment made in accordance with this paragraph 5.5, dismiss that person; and
 - 5.5.4 the Council shall indemnify the Developer and/or any Sub-Contractor against all reasonable Losses which the Developer (or, where applicable, the Sub-Contractor) may suffer or incur in respect of that dismissal and the employment of that person up to the date of the dismissal and any other claim brought by or on behalf of that person.
- 5.6 The Developer shall (in respect of Transferring Employees or Third Party Employees employed by the Developer), and shall use reasonable endeavours to procure that any Sub-Contractor shall (in respect of Transferring Employees or Third Party Employees employed by the Sub-Contractor), indemnify the Council and any Third Party Employer against all Losses incurred by that party in connection with or as a result of:
- 5.6.1 any claim or demand by any Transferring Employee or Third Party Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Developer or the Sub-Contractor, as the case may be, in respect of any

Transferring Employee or Third Party Employee or any claim relating to that period on or after the Effective Date;

- 5.6.2 any failure by the Developer or the Sub-Contractor, as the case may be, to comply with its obligations under Regulation 13 of TUPE, or any award of compensation under Regulation 15 of the Regulations, save where such failure arises from the failure of the Council or any Third Party Employer to comply with its duties under Regulation 13 or 14 of the TUPE; and/or
 - 5.6.3 any claim or demand by any Estate Employee arising out of any change or proposed change in the terms and conditions of employment or working conditions of that person on or after their transfer to the Developer or the Sub-Contractor, as the case may be, on the Effective Date, where that Estate Employee would have a Transferring Employee or a Third Party Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE on or before the Effective Date as a result of any such changes.
- 5.7 Where the Developer or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Developer shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and the Effective Date, and shall comply with the terms of the Admission Agreement. The Developer or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate and Bond value (if relevant) in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date and any other costs of the Council necessarily and reasonably incurred in connection with the Admission Agreement.
- 5.8 The Council shall (and shall procure that the Third Party Employer shall) indemnify and keep indemnified the Developer and/or any Sub-Contractor, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Council or Third Party Employer of the terms of the Local Government Pension Scheme, to the extent that such liability arises before the Effective Date and relates to any Estate Employee.
- 5.9 If the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE), the Developer shall (and shall procure that any relevant Sub-Contractor shall) consult with and inform those Eligible Employees of the pension provisions relating to that transfer.

THE COMMON SEAL of)
THE MAYOR AND BURGESSES OF)
The LONDON BOROUGH OF)
SOUTHWARK)
affixed to this Agreement in the)
presence of:)

Authorised Officer

Seal Register No:

Executed as a Deed by affixing)
the COMMON SEAL of)
NOTTING HILL HOUSING TRUST)
in the presence of:-)

Authorised Signatory

Secretary

Appendix 1

Development Area Plan

Appendix 2
Draft Building Lease

Appendix 3

Draft Plot/ Sub-Plot Lease

Appendix 4
Draft Council Lease

Appendix 5
Draft Legal Charge

Appendix 6

Draft Private Rental Deed

Appendix 7

Initial Business Plan

Appendix 8

Plan of the First Development Site

Appendix 9
Financial Model

Appendix 10

Draft Shared Equity Lease

Appendix 11

Draft Shared Ownership Lease

Appendix 12

Draft Target Rents Tenancy Agreement

Appendix 13

Draft Nominations Agreement

Appendix 14

Form of Appointments and Warranties

Appendix 15

Schedule of Environmental Reports